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**The European Union – the Westminster or Consensual Model of  
Democracy?**

Master's Thesis

Olomouc 2022

“I declare that this thesis titled *the European Union – the Westminster or Consensus Model of Democracy* has been written by me independently and that I have cited all the sources used. I further declare that the actual text of this thesis, including footnotes, has 184 943 characters with spaces.”

Olomouc, 30 November 2022

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## **Acknowledgements**

I would like to thank my supervisor, Mgr. Petra Měšťánková, Ph.D., for her helpfulness, time, and material comments as to how I could improve my thesis. I would also like to thank all my friends and my family, who supported me throughout my studies.

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## Introduction

The formation of the European Union (the “Union” or the EU) on 1 November 1993 was a major milestone in European integration and democracy. The major enlargement in 2004 by ten new member states, including the Czech Republic, to 25 member states and their first participation in the elections to the European Parliament (the “Parliament” or the EP) in the same year was a great a challenge for the existing countries. Since most of the new member countries had been part of the former Soviet bloc, the question was which direction the EU would take. Having this in mind, I have chosen *The European Union – the Westminster or the Consensus Model of Democracy?* as the topic of my thesis, also to build on my bachelor’s thesis titled *Democracy Model of the Czech Republic: Comparison of the Current Model and Babiš Model (Model demokracie České republiky: komparace současného a Babišova modelu)*, which also drew on how Lijphart defines models of democracy.

The Treaty on the Functioning of the European Union (TFEU) and the Treaty on European Union (TEU) are two pivotal primary law treaties, which lay down the EU’s institutions, policies and processes. So why take an interest in polity and model of democracy when in principle the EU’s political system has been defined already? It is because the EU is a sui generis entity. As a result, the EU is a unique organisation where the member states have decided to delegate part of their “sovereign” powers and let them to be decided by joint bodies originating from democratic elections. Although the countries have delegated part of their powers to the Union, the integration among the member countries does not reach such a degree as to permit any notion of a federal state. At the same time, the Union is not an ordinary international organisation because both the breadth and the depth of the Union go beyond those of normal international organisations.<sup>1</sup> With the effectiveness of the Treaty of Lisbon, the EU has become a fully-fledged body of law (in terms of both capacity to have rights and capacity to make juridical acts), both as part of public international law and national law. Therefore, the EU is an autonomous political and social structure that is based on the principle of supranationality.<sup>2</sup> As the EU is a very dynamically developing democratic multicultural institution, it gives plenty of room for exploring a model of democracy where terms such as federation, ethnicity, language and different culture play a major role.

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<sup>1</sup> TOMÁŠEK, M. et al. *Právo Evropské unie*. 2nd ed. Prague: Leges, 2017, p. 121.

<sup>2</sup> HAMULÁK, O. and V. STEHLÍK. *European Union constitutional law: revealing the complex constitutional system of the European Union*. Olomouc: Palacký University Olomouc, 2013, p. 9; HAMULÁK, O. and V. STEHLÍK. *Praktikum práva Evropské unie. Ústavní základy a soudnictví*. 2nd ed. Prague: Leges, 2013, p. 8.

However, the question remains where to find the beginnings of theoretical definitions of models of democracy. The 1950s are the period of first efforts, when a group of political scientists sought to make a detailed typology of political systems. G. A. Almond was one of them – his thoughts on reflections on democracy were published in 1956. Being among the first political scientists who elaborated on Almond's thoughts, Arend Lijphart has laid the foundation stone for the consociational model of democracy. The term *consociational model of democracy* was first used by Lijphart in his extensive study on the characteristics and development of the Dutch political system.<sup>3</sup> But that was just the beginning of his work. He elaborated and modified his theory in the following years to develop a new version termed the consensus model of democracy, which was pitted against the Westminster model.<sup>4</sup> Lijphart's definitions of models of democracy will be the focal point of this master's thesis because they will be applied to the EU's political system, which is chosen as the subject of this thesis.

Some readers may ask: "What is the point in dealing with the model of democracy?" The model of democracy has been treated by both foreign and Czech political scientists for many years and has been a subject of interest for many students. Is there any room for me to draw any new conclusions? I believe there is because, except for Arend Lijphart,<sup>5</sup> researchers have only applied the model to individual countries. Considering the existing investigations, I have formulated the following research question:

- Does the EU correspond more to the consensus or the Westminster model of democracy?

My hypothesis is that the EU's political system approximates the consensus model of democracy. In both editions of *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries*, the EU's political system is classified by Lijphart as the consensus model of democracy. In this context, I will focus on analysing the treaties and the publications dealing with the EU's political system in order to make an assessment of Lijphart's work. This will allow me to draw a conclusion whether the model of democracy approximates the consensus model of democracy or the Westminster model of democracy.

My master's thesis builds on the available sources and literature in order to present and analyse in more depth the given model of democracy while using qualitative research combined with content analysis to facilitate research effectiveness. My thesis covers the period from 2009

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<sup>3</sup> ŘÍCHOVÁ, B. *Přehled moderních politologických teorií*. 3rd ed. Prague: Portál, 2014, p. 200.

<sup>4</sup> HLOUŠEK, V. and L. KOPEČEK (eds.). *Demokracie: teorie, modely, osobnosti a perspektivy demokracie*. Brno: Masarykova univerzita, 2004, pp. 210–211.

<sup>5</sup> In this master's thesis, I will employ a greater degree of detail than Lijphart did.

(the Treaty of Lisbon taking effect on 1 December) to the most recent Parliamentary elections in 2019. The reason for choosing the Treaty of Lisbon milestone is that the Treaty captures the most recent EU law, institutions and policies. Yet the Parliamentary elections in 2004 are used as the data for the chapter *Party System* so that I could have a broader representative sample because that year saw the largest EU enlargement as yet, which included the Czech Republic.<sup>6</sup> The focal points for my master's thesis will be the EU and the consensus and the Westminster models of democracy.

My master's thesis is structured into an introduction, three main chapters and a conclusion. The first chapter treats democracy in broad terms and defines the consensus, the Westminster and the consociational models of democracy and the hitherto application of democracy models to the Union. In the second chapter *Executive-Party Dimension*, I will use the case study method and apply the EU's political system to the theoretical definitions of the five criteria of the said dimension. In the third chapter *Constitutional-Territorial Dimension*, I will also use the case study method but apply it to the theoretical definitions of the remaining five criteria of the said dimension. The sub-chapters of the second and the third chapters deal with the particular criteria which determine whether a model of democracy is the Westminster one or the consensus one. The sub-chapters are arranged chronologically to follow Lijphart's progress of thought in *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* and correspond to the above-mentioned definitions of the ten dichotomous features of the both models. Each sub-chapter is completed with a conclusion as to where the model of democracy is placed on the axis between the Westminster model and the consensus model (Westminster model = minus two; closer to Westminster model = minus one; on Westminster-consensus boundary = zero; closer to consensus model = plus one; or consensus model = plus two). At the end, I assess my success in answering the research question. Therefore, in addition to the introduction and the conclusion, the master's thesis is comprised of three main chapters, with each structured into sub-chapters.

The fulcrum of this thesis is the theoretical concepts of the consensus and the Westminster models of democracy as defined by the political scientist Arend Lijphart. This master's thesis is based on Lijphart's two core books – *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, and *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries*, both the 1999 edition and the second edition from 2012. In the first book from 1984, Lijphart defines nine features a country

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<sup>6</sup> As a result, many more member countries, political entities and persons participated in the Parliamentary elections than did before 2004.



should meet to be regarded as the Westminster model of democracy and eight features to be regarded as the consensus model.<sup>7</sup> Fifteen years later, Lijphart added new democracy model features in his second book. Specifically, Lijphart refers to pluralist interest group systems with free-for-all competition among groups versus corporatist interest groups aimed at compromise. Dependence of central bank on the executive branch is other feature added to the democracy model definition.<sup>8</sup> Models of democracy are built on opposites and represent something like Weberian ideal types. As these brief descriptions of democracy models suggest that no country can fully correspond to either type in each feature, I investigate which model of democracy the EU's political system approximates. My approach builds on the approach of the Irish political scientist Peter Mair, who classified the countries of Western Europe into three groups by placing them on the axis between consensus model and majority model as follows:

1. Those approximating the consensus model (Belgium, the Netherlands, Austria, and Sweden);
2. Those combining the features of the two models of democracy (Switzerland, the Federal Republic of Germany, Finland, and Denmark); and
3. Those approximating the majority model (the United Kingdom, France, Ireland, and Italy).<sup>9</sup>

Giovanni Sartori is another political scientist who researched types/models of democracy, although through a different path, and criticised Lijphart's concept. Sartori's approach and concepts can be found in *The Theory of Democracy Revisited*, and *Comparative Institutional Engineering: An Inquiry Into Structures, Incentives, and Outcomes*. In the Czech Republic, Vít Hloušek and Lubomír Kopeček are two political scientists who have been dealing with models of democracy for many years, for example in the book *Demokracie. Teorie, modely, osobnosti, podmínky, nepřátelé a perspektivy demokracie*, which has been updated several times. Working with Jakub Šedo, Hloušek and Kopeček have published *Politické systémy*, where they discuss Arend Lijphart and an alternative concept of the model of democracy in one chapter and also mention Miroslav Novák, a Czech political scientist who opposes Lijphart's concept. In addition, models of democracy are treated by Blanka Říchová in *Přehled moderních politologických teorií*, a book updated several times.

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<sup>7</sup> LIJPHART, A. *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*. New Haven: Yale University Press, 1984, pp. 6–9, 23–29.

<sup>8</sup> LIJPHART, A. *Patterns of Democracy: Government Forms & Performance in Thirty-six Countries*. New Haven: Yale University Press, 1999, pp. 3–4; LIJPHART, A. *Patterns of Democracy: Government Forms & Performance in Thirty-six Countries*. 2nd ed. New Haven: Yale University Press, 2012, pp. 3–4.

<sup>9</sup> HLOUŠEK and KOPEČEK: *Demokracie...*, pp. 216–217.

# 1 Theoretical Framework of Lijphart's Models of Democracy

Getting an answer to my research question requires first defining the theoretical framework of Lijphart's models of democracy. Models of democracy were a subject to which Lijphart devoted his entire academic career, which started with a consociationalism paper published in 1969. I will be describing further in my thesis that over the years his terms such as accommodation, consociationalism, power sharing, and consensus underwent changes, but the basic characteristics were not modified to such a degree. In his research, Lijphart did not limit himself to Europe and North America but also included countries on other continents. His study researching into consociational democracy covered nine basic cases: the Netherlands, Switzerland, Belgium, Austria, Cyprus, Lebanon, Malaysia, and the Netherlands Antilles. With the increasing number of the countries examined, his theoretical approach changed, shifting from the case study method to the comparative and statistical method and culminating in *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* published in 1999. An important remark made by Lijphart is that for a long time, until he himself abandoned the belief, he had regarded the Westminster majority model as the best form of democracy, and proportional representation and coalition cabinets as something inferior, given the long and strong tradition in the American political science. Eventually, through a systematic comparison of democratic systems, he created the consensus model of democracy, as a contrast to the majority model, and this resulted in two dimensions emphasising the organisation and activities of the executive branch, the party and electoral systems, interest groups, relations between the centre and lower organisational units, the organisation of legislature, and the constitutional system.<sup>10</sup>

In 1999 Lijphart's attitude towards models of democracy changed significantly as he concluded in his book published that year that the consensus model of democracy was prevailing with regard to governance. His clear political recommendation is the consensus model, the combination of a proportional electoral system and a parliamentary form of government being the most important criterion in shaping that democracy. The second edition of the book from 1999 extends the period of his analysis by more than 14 years and confirms his previous conclusions. Even the evidence of the interrelationships of the ten criteria between the consensus and the Westminster models of democracy shows that the former model is still clearer and stronger. Arend Lijphart sums up and makes a clear conclusion that the "first-past-

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<sup>10</sup> LIJPHART, A. Consociationalism After Half a Century. In: JAKALA, M. and D. KUZU and M. QVORTRUP (eds.). *Consociationalism and Power-Sharing in Europe: Arend Lijphart's Theory of Political Accommodation*. Cham: Palgrave Macmillan, 2018, pp. 1–6.

the-post” electoral system is only fit for homogeneous societies and inappropriate for divided ones. Whereas the proportional electoral system and the sharing of power are fairer, more legitimate and more conducive to peaceful coexistence.<sup>11</sup> It is therefore clear that Lijphart’s examination of models of democracy focuses on political system institutions and the system of governance.

## 1.1 Starting Points of Lijphart’s Theory

The first researcher who attempted to make a typology of political systems was G. A. Almond, whose reflections on democracy were published in 1956. Almond distinguished two types of European political systems, which he considered fundamental, namely the stable Anglo-American type (the USA and the United Kingdom) and the unstable system in the continental Europe (the then France or Italy).<sup>12</sup> In addition to this typology of “common” comparative examples, he also included the Netherlands and the Scandinavian states, which he considered a unique type of political system standing somewhere in between. However, he revised his typology in the following years and incorporated new empirical examples; this stirred a number of political scientists to accept Almond’s theory as a challenge.<sup>13</sup>

Being among the first ones to respond, Arend Lijphart continued those ideas and laid the foundation stone for consociational democracy. This term was first used by Lijphart in *Politics of Accommodation*, an extensive study on the development and characteristics of the Dutch political system in the late 1960s. Here Lijphart identified several types of democratic regimes and analysed with a considerable degree of detail the conditions for a stable and effective democratic political system to be able to develop successfully in an environment of a considerable internal split along religious, cultural, language and social boundaries.<sup>14</sup> Based on these variables, his typology took account of that degree of cultural fragmentation in the given society and of the cohesion in the political elite. By the degree of fragmentation, Arend Lijphart divided democracy into four types:

1. Centrifugal democracy – a society characterised by a high degree of cultural fragmentation coalescent with competitive elites, which causes instability in such democracy. Examples of this type are: the Weimar Republic (1918–1933), the Fourth French Republic (1945–1958) or the First Italian Republic (1945–1993).

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<sup>11</sup> LIJPHART: *Consociationalism After...*, pp. 6–9.

<sup>12</sup> LIJPHART, A. *Democracy in Plural Societies*. New Haven: Yale University Press, 1977, pp. 8–9.

<sup>13</sup> ŘÍCHOVÁ: *Přehled moderních...*, p. 200.

<sup>14</sup> *Ibid.*

2. Centripetal democracy – a society with high cultural fragmentation coalescent with competitive elites but characterised by stability and effectiveness. The United States, the United Kingdom, the Federal Republic of Germany, Australia and New Zealand are typical examples.
3. Consociational democracy – a society characterised by a high degree of cultural fragmentation and stability (in contrast to centrifugal democracy). Examples are Belgium and Austria.
4. Depoliticised democracy – unlike the previous types, this democracy is characterised by a low degree of cultural fragmentation in society and thus almost no political competition.<sup>15</sup>

## 1.2 Consociational Model of Democracy

It follows from the previous breakdown of the types of democracy of the 1960s that consociational democracy presupposes a country with a high degree of cultural fragmentation. Also applied by sociologists, consociationalism is a term that refers to a certain social division of society by a religious, ethnic, language or other criterion and builds on the concept of cleavages as presented by S. Rokkan and S. M. Lipset in their extensive, conceptually significant and empirically based work. According to Lijphart, the consociational pluralistic society is characterised by a relative independence of individual segments that lack any deeper mutual communication connections. However, if the system is to work, these connections are substituted and compensated for by stakeholders cooperating at the state level. The idea of consociationalism then translates itself in the entire theory and becomes a critical idea that helps to maintain social system cohesion and is able to counteract disintegrative tendencies. According to Lijphart, the relations among sub-cultures' elites, the relations among subcultures at the level of masses, and the elite-mass relations in each sub-culture are the most suitable conditions that facilitate establishing this type of democracy and contribute to preserving it.<sup>16</sup>

The essence of the consociational democracy theory is four fundamental typical elements that determine a political system's stability and functionality. These elements include – grand coalitions, mutual (minority) veto, proportionality, and segmental autonomy. The first and most important element is grand coalition governance, which, unlike the British model, includes more relevant political parties than required to form a majority government. As a result, multiple political parties and movements participate in the executive power and each

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<sup>15</sup> HLOUŠEK and KOPEČEK: *Demokracie...*, pp. 203–204.

<sup>16</sup> ŘÍCHOVÁ: *Přehled moderních...*, pp. 204–205.

may represent a certain part of the segmented society. That behaviour causes political competition to become less important whereas inter-party collaboration gains a more important role. According to Lijphart, the best examples of broad coalitions are the Swiss Federal Council comprised of seven members, the Austrian broad coalition between 1945 and 1966, and the Dutch Social and Economic Council (SER); moreover, the Committee of Five during the first Czechoslovak Republic is also regarded by Lijphart as a similar example.<sup>17</sup>

Providing minorities with reliable, although not absolute, protection, mutual (minority) veto serves as a safeguard against the possibility of the majority principle taking control. This gives the political entities with less parliamentary representation a chance to express their disagreement with an emerging dominance of a single party. This power should only be used in the last resort. The forms are diverse: in the Netherlands it is an informal rule regarded by all as a legitimate expression of dissent whereas in Austria and Switzerland that right is codified in their constitutions. Proportionality represents a significant variance from the majority rule and, like mutual veto, is connected with the principle of broad coalitions. This principle includes a proportional electoral system, which allows minorities to be represented in parliament. In addition, Lijphart considers it necessary for proportional logic to become a system-wide value at the level of political representation because should a majority government be formed, the principle of all interests being in a balance would be disrupted. The last principle of the consociational model of democracy is segmental autonomy. Segmental autonomy means that the representatives of individual segments should in all matters of common interest decide in proportion to the degree of their influence whereas independent decision-making is retained for the decisions over their own segments.<sup>18</sup>

### **1.3 Consociational or Consensus Model of Democracy?**

In the 1970s, a growing number of papers on specific examples of consociational democracies gave rise to a need to incorporate this type of democracy into a much broader comparative context. And the still increasing number of papers and theories resulted in the terminological problem acquiring another, a much more fundamental dimension. As a result of the need for a more general theory, Arend Lijphart came to specialise in the more general aspects of the comparative analysis of contemporary political systems and published his

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<sup>17</sup> LIJPHART: *Democracy in plural...*, pp. 25, 31–33.

<sup>18</sup> *Ibid.*, p. 36–42.

findings in *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (1984).<sup>19</sup>

In that book Lijphart characterises the features of majoritarian (or Westminster) democracy as one extreme model, with consensus democracy, deliberately referred to as the non-majority model, being defined as the other extreme model. These extreme models form a list of the basic features which, being opposites of each other, should strengthen the comparative level of evaluating the selected empirical examples. The investigation revealed, as pointed out by Lijphart himself in the introduction, that such a comparison needs to distinguish between the concept of consociational democracy and that of consensus democracy; the presented model of consensus democracy is inspired by previous works on consociational democracy.<sup>20</sup> The theory with two extreme models has met with criticism from a number of political scientists, who remarked on an unjustified and methodologically flawed step in the consensus model of democracy. Sartori said that the consociational model of democracy certainly had an immense and positive effect on political science theory, but the attempt to design a grand general theory was completely unfounded.<sup>21</sup> Although Sartori became one of the strongest critics of Lijphart's conception of democracy, in my master's thesis I will use Sartori's ideas for the purpose of party system identification.

#### **1.4 Westminster Model of Democracy**

It follows from the previous chapter that Lijphart was further developing and expanding his concept of consociational democracy until he arrived at two extreme models of democracy – the Westminster and the consensus models. The models are built on ten mutual opposites, where one pole is characterised by majority elements and the other pole is not.<sup>22</sup> Therefore, I have decided to reserve two chapters for theoretically defining each element. The hypothesis and Lijphart's own assessment of the EU's political system suggest that the Union is more distant from this model, which is therefore defined first. The Westminster model of democracy is also referred to by other terms, one of them being *majoritarian model*, which can be found in Lijphart's *Patterns of Democracy: Government Forms & Performance in Thirty-six Countries*. A chapter in *Patterns of Democracy* demonstrates the criteria for the majoritarian model on the examples of the United Kingdom, New Zealand, and Barbados in the Caribbean.

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<sup>19</sup> ŘÍCHOVÁ: *Přehled moderních...*, p. 214.

<sup>20</sup> Ibid.; LIJPHART, A. *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice*. London: Routledge Taylor & Francis Group, 2008, pp. 6–9.

<sup>21</sup> ŘÍCHOVÁ: *Přehled moderních...*, p. 214.

<sup>22</sup> See Table 1.

Since the models of democracy are ideal extreme models, as pointed out by Lijphart himself, the countries do not meet all the criteria for the Westminster model of democracy but are closer to that model than other countries. That is reflected in New Zealand, which, in addition to the United Kingdom, is the second example demonstrating the Westminster model of democracy only until 1996, and Barbados, which is the prototype of the majoritarian model only in the party-executive dimension and does not meet the criteria to any degree in the second dimension. Each of the models of democracy is characterised by ten main features; the Westminster model's features are:

1. Executive power concentrated in the hands of a single party and a “one-colour government” – a significant manifestation is the victory of the party which is able to have all executive power in their hands. In contrast to the consensus model of democracy, coalition government is exceptional in the Westminster model, and if set up, it is usually an exception to the rule only serving the purpose of getting a majority in parliament.
2. Primacy of government over parliament – the government can decisively influence the decisions taken by the parliament although the parliament can and is required to scrutinise what the government does. This is because prime minister is also the leader of the political entity which enjoys majority in the parliament, which puts the government in a position of dominance over the parliament.
3. Two-party system (bipartisanship) – elections produce two powerful political entities that together hold the majority of votes and dominate the parliament as a result. The party with an absolute majority of seats becomes the ruling party. Unlike the predominant system, bipartisanship counts on the second strongest party, which can succeed and become the ruling party in the future. A two-party system does not exclude the existence of additional political entities, which, however, enjoy a limited chance to assert their views.<sup>23</sup>
4. Majority and disproportional electoral system – a pure example is the majoritarian electoral system (“first-past-the-post”), which has a single round and the victory is won by the candidate obtaining the highest number of votes even if it is not an absolute majority (“the winner takes it all”). In practice, this may result in the second party obtaining more votes but winning fewer seats in the sum of all electoral districts.

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<sup>23</sup> Giovanni Sartori deals with the two-party system as well as other party systems.

5. Pluralism of interest groups – a system with a large number of non-coordinated interest groups that produce competition and put pressure on the government as a result.
6. Unitary and centralised governance – autonomy and the delegation of powers to local wholes are very limited because all executive power is concentrated in the government.
7. Concentration of the legislative power in one chamber of parliament – if, at all, the political system has a two-chamber parliament, the system is referred to as unbalanced (asymmetrical) bicameralism. This also means a disturbed balance in parliament, with one chamber's powers prevailing over the other chamber's powers (usually the lower chamber over the upper one) and the other chamber having the weaker position and being able to do no more than hinder the lower chamber's decisions. Consequently, the system effectively works as a single-chamber (unicameral) system in spite of the actual existence of two chambers.
8. Flexible constitution – the parliament in fact enjoys unlimited sovereignty that consists in the power to pass a law whether or not the law is constitutional. The parliament can do so because of the absence of any control mechanism, such as constitutional court, that could declare the law unconstitutional.
9. Absence of judicial review – the legislature enjoy unconditional and sovereign power that is subject to no higher review as a result of the absence of constitutional court or a corresponding court with judicial review jurisdiction.
10. Central bank controlled by executive power – the central bank and related monetary policy are tied to the government, who exert a critical influence on them.<sup>24</sup>

As implied by the ten features of the Westminster model of democracy, the model is based on a maximum degree of power centralisation in the hands of the ruling party without any division of power for regions. The victorious ruling party bears all the responsibility for the exercise of power, and this makes it different from the opposition; put in simple terms, the “majority” is pitted against the “minority”. This arrangement facilitates flexible and dynamic working of the parliament because the ruling party need not seek compromise in long, complicated and strenuous negotiations. On the other hand, there is the danger of abuse of power as a result of “unlimited” power.<sup>25</sup>

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<sup>24</sup> LIJPHART: *Democracies: Patterns of...*, pp. 4–9; LIJPHART: *Patterns of Democracy...*, 1999, pp. 9–30; LIJPHART: *Patterns of Democracy...*, 2012, pp. 9–29; HLOUŠEK and KOPEČEK: *Demokracie...*, pp. 214–215.

<sup>25</sup> HLOUŠEK and KOPEČEK: *Demokracie...*, pp. 215–216.



The best example is the United Kingdom, a country where the Conservative and the Labour parties have been alternating in power on a regular basis since the Second World War. Although it is not the case that the interval has always been no longer than two election terms, the interests of the other party have never been suppressed. However, the regular distribution of the “majority” and the “minority” in the House of Commons (650 seats) was disrupted in the elections in 2010, 2015 and 2017 because the victorious party did not win an absolute majority of votes, except for the year 2015 (331 seats)<sup>26</sup>, and had to rely on the support of other parties. Five years earlier, the victorious Conservative Party had only won 306 seats<sup>27</sup>, and lost absolute majority in the early election in 2017 while winning 317 seats.<sup>28</sup> The election results forced the winning party to form a coalition government in 2010 and a minority cabinet in 2017. However, this trend reversed in the early election in 2019, and the winning party regained absolute majority in the House of Commons with 365 seats.<sup>29</sup>

One of the critics of this model was the Nobel Prize-winning economist Sir Arthur Lewis, who argues in his *Politics in West Africa* that the majoritarian model is undemocratic because of its exclusion principles. According to Lewis’s first and principal argument, democracy is that: ““all who are affected by a decision should have the chance to participate in making that decision either directly or through chosen representatives.’ Its secondary meaning is that ‘the will of the majority shall prevail’”.<sup>30</sup> These arguments are appropriate for heterogeneous societies. Lijphart himself agrees with this statement, adding that in a pluralistic society divided ideologically, ethnically, linguistically and religiously, the majority model is not only undemocratic but also dangerous because minorities can be permanently rejected and discriminated against in their access to power, and will eventually lose confidence in the regime. However, if “majorities” and “minorities” alternate in holding power through elections and the additional aforesaid requirements are met, that argument should not be upheld. Arend Lijphart concludes that the consensus model is suitable for both heterogeneous countries and less divided countries because it brings a number of benefits, and therefore is, as Lijphart

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<sup>26</sup> UK Political info. 2015 General election results summary. *UKpolitical.info* [online]. 2015 [viewed 23 January 2022]. Available from: <http://www.ukpolitical.info/2015.htm>

<sup>27</sup> UK Political info. 2010 General election results summary. *UKpolitical.info* [online]. 2010 [viewed 23 January 2022]. Available from: <http://www.ukpolitical.info/2010.htm>

<sup>28</sup> BATE, A. et al. General Election 2017: full result and analysis. *Parliament.uk* [online]. 29 January 2019 [viewed 23 January 2022]. Available from: <https://commonslibrary.parliament.uk/research-briefings/cbp-7979/>

<sup>29</sup> NORDSIECK, W. Parties and Election in Europe. United Kingdom. *Parties-and-elections.eu* [online]. 2019 [viewed 23 January 2022]. Available from <http://www.parties-and-elections.eu/unitedkingdom.html>

<sup>30</sup> LIJPHART: *Patterns of Democracy*..., 1999, p. 31; LIJPHART: *Patterns of Democracy*..., 2012, p. 30.

believes, a feasible and reasonable alternative to the Westminster model of democracy; the other way round, however, lacks in reasonableness.<sup>31</sup>

## 1.5 Consensus Model of Democracy

In my opinion, the consensus and the consociational models of democracy are interrelated and similar and share some features. However, in his publications Lijphart only admits some continuity between the two models because firstly the consensus model of democracy defines more criteria and secondly it places greater emphasis on institutions and political procedures. Lijphart's criteria for consensus democracy are elaborated, and the concept gravitates towards a general normative theory, which has been criticised by other political scientists.<sup>32</sup>

I have demonstrated in my thesis that the consensus model of democracy has been formulated as the antipole to the Westminster model that is built on direct opposites ("Weberian ideal types"). The consensus model has been created by Arend Lijphart for a pluralistic society that is divided ideologically, ethnically, linguistically, and religiously and wants to promote democratic elements. As an example he uses Northern Ireland where society is deeply split, and here it is clear that the ruling majority works like the dictatorship of majority and a civil strife rather than democracy. Consequently, the question is what such "democracies" need. Arend Lijphart believes they need a regime that tends to include rather than exclude minorities, emphasise consensus rather than rivalry, and seek to have the maximum possible majority for the ruling group rather than contend itself with the strictly necessary majority. Such a regime would then be one that applies the consensus model of democracy.<sup>33</sup> The following Table 1 defines the ten already-described features typical of the Westminster model and those of the consensus model, arranged chronologically by dimension and criterion. Given my hypothesis, these criteria are discussed in detail in separate chapter 1.5.1.

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<sup>31</sup> LIJPHART: *Patterns of Democracy...*, 1999, pp. 31–33; LIJPHART: *Patterns of Democracy...*, 2012, pp. 30–32.

<sup>32</sup> For example by Miroslav Novák and Giovanni Sartori; HLOUŠEK and KOPEČEK: *Demokracie...*, p. 210.

<sup>33</sup> LIJPHART: *Patterns of Democracy...*, 1999, p. 33; LIJPHART: *Patterns of Democracy...*, 2012, p. 32.

Table 1: Ten Characteristics of Consensus and Westminster Models of Democracy

<b>Consensus Model</b>		<b>Westminster Model</b>
<b>I) Executive-Party Dimension</b>		
1.	Executive power shared in broad (grand) coalitions	Executive power concentrated in the hands of single-colour government
2.	Balance between executive branch and legislature	Executive branch prevails over parliament
3.	Multi-party system (with more than two parties)	Two-party system
4.	Proportional electoral system	Majority or disproportionate electoral system
5.	Corporatism	Pluralism
<b>II) Federal-Unitary Dimension</b>		
6.	Federal and decentralised state	Unitary and centralised state
7.	Symmetrical (balanced) bicameralism	Unicameralism or asymmetrical (unbalanced) bicameralism
8.	Rigid (written) constitution	Flexible (often unwritten) constitution
9.	Judicial review of constitutionality	Absence of judicial review
10.	Central bank independent of executive branch	Central Bank dependent on executive branch

Source: HLOUŠEK, V. and L. KOPEČEK and J. ŠEDO. *Politické systémy*. Brno: Barrister & Principal, 2011, p. 71; table format taken from my bachelor's thesis.

### 1.5.1 Ten Characteristics of Consensus Democracy

Table 1 clearly demonstrates that, as the antipole to the Westminster model of democracy, the consensus model is seen by Lijphart as divided into the executive-party

dimension and the constitutional-territorial dimension,<sup>34</sup> each characterised by five criteria. This model's principal feature is efforts to share, disperse and limit power in different ways rather than concentrate power in the hands of majority. Arend Lijphart demonstrates the model using the example of Switzerland and Belgium,<sup>35</sup> the model being described through the following ten features:

1. Shared executive power: This consists in forming broad coalitions, with the government comprised of more political parties than would be necessary for gaining majority. Such a model is characterised by political parties having large shares in the executive power, in contrast to the majoritarian model, which concentrates power in the hands of the winning entity with an absolute majority. Shared power results in lower importance of electoral competition and higher degree of cooperation among the parties. The importance of grand coalition lies in the number of its seats, which largely exceeds the minimum number of seats required to form a government. The Swiss Federal Council applied the system of the magic formula (2:2:2:1) or seven executive seats positions between 1959 and 2003, when this regular distribution of the executive positions among political entities was interrupted until 2009, when the magic formula was resumed. The magic formula consists in the representation of the country's all important political entities and language groups, among other things.
2. Balance between the executive branch and the legislature: Striking a balance requires weakening the executive branch, which results in a balanced distribution of power between parliament and government. Such a balance can be achieved, for example, by government being dependent on a vote of confidence from parliament, which is the case of Belgium. This institute causes Belgium governments to be usually short-lived because they are often incoherent coalitions the survival of which lies in the hands of the parliament. Between 1980 and 2010, Belgium had nine diametrically different party coalitions with an average lifespan of about three years.
3. Multi-party system: In contrast to the Westminster model of democracy, the winning party does not have the potential to form a single-colour government holding an absolute majority in the parliament, as is the case in the two-party system. Election results cause the parliament to be made up of a number of smaller relevant parties,

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<sup>34</sup> In the second and third chapters, I use the term *constitutional-territorial* for the second dimension because I believe that it better captures the second dimension's criteria.

<sup>35</sup> His application of the consensus model to the EU will be discussed in the following chapter.

which will form broad coalitions.<sup>36</sup> A significant example is the composition of the Swiss National Council in 1995 and 2007, when 15 and 12 political entities, respectively, get represented in the Council. In Switzerland and Belgium, the emergence of the multi-party system is primarily attributable to a pluralistic society that is split along several lines.

4. Proportional electoral system: Seats in parliament are distributed by the preference of voters. The proportional electoral system ensures that represented are also minorities, which could be excluded in the majoritarian electoral system because of the concentration of votes.<sup>37</sup>
5. Interest group corporatism: Interest groups are organised better and exist in lower numbers than in the Westminster model. The lower number of groups reduces their competition and results in coordinated negotiations with the government, which is the case in Switzerland and Belgium, for example, where they take part in tripartite negotiations. Belgium's tripartite cooperation has been in place since the Social Pact adopted in 1944, and the Pact's fundamental elements have remained unchanged to the present day.
6. Federal and decentralised governance: An important role is played by autonomy and the delegation of powers to branches of the state (devolution) and a strong emphasis is placed on the dispersion of power among the country's organisational units. Being the most decentralised country in the world, Switzerland has a system where power is distributed among central government, the governments of 12 cantons and those of six half-cantons. Generally speaking, it is the delegation of the decision-making powers to regional authorities (provincial, regional or cantonal). In Belgium, which officially became a federal country in 1993, power is transferred to cultural communities (Flemish, French and German-speaking communities).
7. Strong bicameralism: The consensus model presupposes the existence of two parliamentary chambers that hold balanced powers; also referred to as symmetrical bicameralism. This ensures that the interests of minorities are represented in pluralistic societies. However, for the representation of minorities to be ensured

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<sup>36</sup> By *relevant party* Giovanni Sartori refers to an entity with a capacity to make coalitions or blackmail; SARTORI, G. *Strany a stranické systémy: schéma pro analýzu*. Brno: Centrum pro studium demokracie a kultury, 2005, p. 136.

<sup>37</sup> The aim of the proportional electoral system is to exclude any over-representation of large parties. Moreover, this principle extends to not only elections but also the general application of proportionality throughout the political system, in public funding and state administration (a representation quota for each political group); LIJPHART: *Democracy in plural...*, pp. 38–41.

fairly, two conditions must be met – each chamber must have a different electoral system and the upper chamber must hold real powers (ideally, more powers than the lower chamber). Everything is built on a principle that should prevent discrimination against minorities. Both conditions are fulfilled in Switzerland, where Swiss citizens are represented in the National Council being the lower chamber and cantons are represented in the Council of States being the upper or federal chamber. As a result, smaller cantons are more strongly represented in the upper chamber.

8. Rigid constitution: In contrast to the Westminster model, these states, such as Switzerland and Belgium, typically have a written constitution, a document that regulates the basic rules of governance and can only be amended through a special procedure. This arrangement is to prevent any abuse of power by the majority and to protect the rights of minorities. A simple majority is not enough to amend the constitution or pass a new one. Any amendment requires a qualified majority in the form of the consent of two thirds of members in both parliamentary chambers or the consent of regional authorities or, as the case may be, a special voting by the bodies representing the minority.
9. Possibility of judicial review: This is a specific right of “veto” that is held by the minority against the majority but must not be used to blackmail the majority. A prerequisite for judicial review is the existence of a written constitution and a special court vested by the constitution with the power to review legislation. In Switzerland, this role is played by the Federal Court whereas it may be constitutional courts in other countries. In Belgium, there had been no possibility of judicial review until 1984, the year of the establishment of the Court of Arbitration succeeded by the Constitutional Court after a constitutional revision.
10. Central bank independence: The most important task of the central bank is to create monetary policy, and this can be done independently of the executive branch or on the basis of its decisions. What is the critical criterion for the consensus model of democracy is the central bank’s independence of the executive branch. The Swiss Central Bank is considered to be one of the most independent banks in the world.<sup>38</sup>

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<sup>38</sup> LIJPHART: *Patterns of Democracy...*, 1999, pp. 34–41; LIJPHART: *Patterns of Democracy...*, 2012, pp. 33–40; HLOUŠEK and KOPEČEK: *Demokracie...*, pp. 211–213.

## 1.6. Application of Models of Democracy to European Union

Arend Lijphart first published an application of the consensus model of democracy to the EU in the first edition of his *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* in 1999 and gave Switzerland and Belgium as typical examples of consensus democracy in the opening chapter. The EU is regarded by him as a third typical example because the Union is seen as a supranational entity rather than an international institution. Lijphart believes that any step towards federation makes the Union's institutions to be significantly similar to the consensus model of democracy. However, he points out that the application of the model to the EU does not fit the executive, legislative and judicial branches of government and the monetary authorities as easily as it did for the previous model states. This is particularly the case with the European Council, which is composed of heads of national governments. Lijphart treats the Parliament as the lower house and the Council of the EU as the upper house in the concept of bicameralism.<sup>39</sup>

In the second edition, Lijphart builds on his original work and the second edition's opening chapter on the consensus model of democracy follows the original concept. The EU is seen through the same lenses and is regarded as an example of a multi-ethnic entity. Account is taken of that the Treaty of Lisbon was adopted in 2007 and took effect in 2009. Emphasis is placed on the position of the European Council, which is considered by Lijphart to be the strongest European institution that is responsible for the greatest steps in the development of European integration since 1993. The European Commission is seen as the EU's executive body comparable to a cabinet.<sup>40</sup>

In *Thinking About Democracy: Power sharing and majority rule in theory and practise*, Arend Lijphart reflects on the very organisation of the Union, which he sees as a union of democracies that is becoming, or at least is on its way to become, a sovereign state (probably a federation). He remarks on certain important European traditions that should not be left out in the future arrangement. According to Lijphart, one such a tradition is that the European continent is the place with the largest number of successful democracies in the world; Lijphart counted 19 democracies for the period between 1980 and 2000, which is a majority as 34 is the world's total democratic countries.<sup>41</sup> A second tradition is that European countries, with a few exceptions, tend towards parliamentarism and a proportional electoral system, as opposed to

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<sup>39</sup> LIJPHART: *Patterns of Democracy...*, 1999, pp. 33–34, 42.

<sup>40</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 32–33, 40–41.

<sup>41</sup> Arend Lijphart takes no account of mini countries with populations under 250,000. Compared to the present day, that number would have to be higher, at least by the countries of Central Europe.

presidentialism and a majoritarian electoral system. On the basis of these traditions, the Union should be organised as an entity with a prime minister and a cabinet (government) that is accountable to, and asks for confidence from, the lower house of the legislature, who are elected through a proportional electoral system. However, what goes against the traditions, according to Lijphart, is the proposal that the President of the Commission should be elected in direct nation-wide elections; such elections would make the president to be a predominant executive leader typical of the presidential system in contrast to prime minister being first among the leaders. According to Lijphart, a second accent placed on the electoral system could solve the democratic deficit, with prime minister and cabinet to be selected in the same manner as is the practice in most European democracies. The other side of the coin is low voter turnout and the absence of genuine European political parties because these two conditions seem to determine the composition of a really strong legislature and executive. Also, a greater uniformity of proportional electoral systems would be desirable. Arend Lijphart cannot imagine the EU being anything else than a federation with the current member countries being the federal states, recommends preserving the European political system traditions rather than following the American model of federation, and draws attention to the over-representation of small states in the U.S. Senate. According to Lijphart, over-representation of small states is also present in the Parliament, Austria and Germany, the difference being that the system does not tend towards absolute equality. The last significant element of the EU's political system is bicameralism, Lijphart believes.<sup>42</sup>

Lijphart's examination of the consociational model of democracy and his classifying the European Union under the consensus model of democracy have divided political scientists across the world into two groups. One group accepted that Lijphart actually treated the EU as a federal state, and thus were able to analyse the European political system. However, this approach has not contributed to the formation of any coherent and clear interpretative network for the Union. Although the other group of political scientists did not adopt Lijphart's approach and went their own ways, elements of the consociational model of democracy became a springboard for them to examine the functioning of the Union more closely. Olivier Costa and Paul Margette were among those. They made a conclusion that three main types of consociation existed in consociational political groups. They identified the European Union as an interstate consociation which was brought into existence in national segments which created a non-state

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<sup>42</sup> LIJPHART: *Thinking about Democracy*, pp. 156–159.



system. In addition, they also identified the classical and the federal consociations as defined by Arend Lijphart.<sup>43</sup>

In 1998 the American political scientist Matthew J. Gabel asked himself a different question: why is the European Union stable? He saw one of the problems in that the EU's governing institutions had experienced no major crises that could be compared against stability. Another problem was the lack of theories on the stability of the EU because theories had focused on why states agreed to changes in administration in the Union. Gabel concluded that maintaining stability of European institutions required consent across national borders. Gabel believes that this situation is analogous to that in countries with segmented society and is supported by Lijphart's consociational theory. Gabel, as well as Lijphart, concludes that stability requires the fulfilment of four basic conditions: consensus and private resolution of conflicts between units; protection against majoritarian decisions that threaten a unit's interests; a high degree of political segmental autonomy; and proportional representation in governing institutions. However, he adds that the EU's immutable aspects, such as the economic interdependence, are what may also contribute to the EU's stability besides the consociational analogy.<sup>44</sup>

As the European Union has been adopting revising treaties over the years, so the scrutiny of the EU by political scientists has been shifting. The significant changes after the Treaty of Lisbon were responded to in 2019 by the political scientists Simona Piattoni and Luca Verzichelli in a paper titled *Revisiting Transnational European Consociationalism: The European Union and Decade After Lisbon*, which discussed the concept of consociation as applied to the EU. Because it was ten years after the Treaty of Lisbon took effect, what the authors also took account of in addition to the institutional and procedural changes was the crisis in the euro area and the refugee crisis. Last but not least, they raise the question as to whether or not the EU could still be seen, through those changes and crises, as an example of consociational democracy. Building on Lijphart's ideas, the authors conclude that the Union can still be qualified as consociational democracy, but draw attention to the danger of having ambition to shift the Union towards majorisation and competition.<sup>45</sup> What I should not omit is

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<sup>43</sup> COSTA, O. and P. MAHNETTE. The European Union as a Consociation? A Methodological Assessment. *West European Politics* [online], 2003, 26(3) [viewed 24 November 2022], pp. 1–2, 15–16. Available from: <https://doi.org/10.1080/01402380312331280568>

<sup>44</sup> GABEL, M. J. The Endurance of Supranational Governance: A Consociational Interpretation of the European Union. *Comparative Politics* [online]. 1998, 30(4) [viewed 24 November 2022], pp. 463–464, 472–473. Available from: <https://doi.org/10.2307/422334>

<sup>45</sup> PIATTONI, S. and L. VERZICHELLI. Revisiting Transnational European Consociationalism: The European Union a Decade After Lisbon. *Swiss Political Science Review* [online], 2019, 25(4) [viewed 24 November 2022], pp. 498, 503–504, 513–514. Available from: <https://doi.org/10.1111/spsr.12380>

a paper from 2021, in which the political scientist Matthijs Bogaards examines the coexistence of consociational democracy together with the centripetal elements in the EU: elections to the EP, political parties at European level, consociational interpretations of the Union, and the centripetal practices in the EP and the elections to the EP. Bogaards concludes that the consociational and the centripetal elements in the EU are in fact cohabitants, with all the institutions sharing one house but each occupying a different room.<sup>46</sup>

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<sup>46</sup> BOGAARDS, M. The European Union: Consociational Past, Centripetal Future?. *Representation* [online], 2022, 58(3) [viewed 24 November 2022], pp. 443-460. Available from: <https://doi.org/10.1080/00344893.2021.1898459>

## 2 Executive-Party Dimension

### 2.1 The Executive

In *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries*, Arend Lijphart draws attention to that the main institutions of the EU do not correspond to the classic division into executive, legislative, judicial and monetary bodies, as is the case with states.<sup>47</sup> However, the EU's main institutions<sup>48</sup> include an institutional triangle that plays a key role in the Union's decision-making activity. This "triumvirate" consists of the Parliament, the Council and the European Commission (the Commission).<sup>49</sup> Looking at the powers of each institution, it is possible to determine which one is the executive body and then identify the model of democracy in the first feature. Although the European Council, comprised of permanent president, each member country's head of state or prime minister and the President of the Commission, is the Union's top political body<sup>50</sup> and has been setting future development and objectives<sup>51</sup> since 1993, there is a general agreement that the Commission is the main executive body at supranational level. The European Council is considered part of the executive power at intergovernmental level.<sup>52</sup> The Commission's seat is in Brussels, with some departments seated in Luxembourg.<sup>53</sup>

The Commission is the Union's main supreme institution vested both with executive powers and with the powers of scrutiny and initiative. It is similar to national governments in that its establishment involves confidence voting by the Parliament, and its five-year term of office is tied to the parliamentary term of the EP. The Commission is also similar as to composition because individual commissioners, always one from each member state, share the roles of President, the High Representative of the Union for Foreign Affairs and Security Policy, Vice-Presidents, and the commissioners for the administration of individual departments and scopes of duties (27 in total). In our context, the departments and scopes of

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<sup>47</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 40–42.

<sup>48</sup> The European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank (ECB), and the Court of Auditors.

<sup>49</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 159.

<sup>50</sup> *Ibid.*, p. 160.

<sup>51</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 40, 42.

<sup>52</sup> TOSATO, G. L. The Institutional Framework of the European Union. In: AMATO, G. et al. (eds.). *The history of the European Union: Constructing Utopia*. Portland, Oregon: Hart, an imprint of Bloomsbury, 2019, pp. 152–159.

<sup>53</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 172; HERZOG, R. and L. GERKEN. Evropa zbavuje nás a naše zástupce vlivu. *Euroskop.cz* [online], 2007 [viewed 23 January 2022]. Available from: <https://www.euroskop.cz/9004/815/clanek/evropa-zbavuje-nas-a-nase-zastupce-vlivu/>; BŘICHÁČEK, T. Demokratický deficit EU: mýty a skutečnost. *CDK.cz* [online], February 2006 [viewed 23 January 2022]. Available from <https://www.cdk.cz/demokraticky-deficit-eu-myty-skutecnost>

duties could be referred to as ministries. However, in contrast to states, the President of the Commission is proposed by the representatives of the individual countries in the European Council by a qualified majority. The nominations usually take account of the results of the elections to the Parliament, which must elect the President of the Commission by an absolute majority of all votes. Subsequently, the candidate for the President of the Commission selects potential Commissioners and Vice-Presidents on the basis of proposals from the member states which did not produce the President of the Commission or the High Representative for Foreign Affairs and Security Policy (“FASP”). The list of candidates is subject to approval by the leader of each member state in the European Council. And a special procedure applies to selecting the High Representative for FASP, who is chosen by a qualified majority of the European Council in agreement with the President. Subsequently, the candidates present their visions in the Parliament and may be asked by MEPs during the hearing whether they feel competent enough to perform their duties (this process is also known as “grilling”). The next step in this complicated process is that the Commission as a group asks the Parliament for vote of confidence, and then is appointed to office by the European Council. In the light of the Irish referendum on the Treaty of Lisbon, the “one state one Commissioner” rule applies even though Article 17(5) of the Treaty on European Union provides that the Commission is comprised of a number of members that corresponds to two-thirds of the number of Member States.<sup>54</sup> It has never been the case since 2004 that the number of Commission representatives does not correspond to the number of Member States.<sup>55</sup>

In his book Arend Lijphart says that a single-party parliamentary majority and a broad multi-party coalition are a typical embodiment of the differences between majoritarian principles on one hand and consensus principles on the other hand. Furthermore, in the standard classification in the coalition theory, he distinguishes between minimal winning cabinets, oversized cabinets, and minority or undersized cabinets.<sup>56</sup> Critical for the purpose of my thesis is the oversized cabinet, which also includes those parties that would not be needed for getting

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<sup>54</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 173–174; HAMULÁK and STEHLÍK: *European Union constitutional law...*, pp. 46–47; Consolidated version of the Treaty on European Union. Official Journal C 202/13, 7 June 2016, Articles 17–18; Directorate-General for Communication. EU INSTITUTION: European Commission. *European-union.europa.eu* [online], 2022, [viewed 23 January 2022]. Available from: [https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/european-commission\\_en](https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/european-commission_en)

<sup>55</sup> Directorate-General for Communication. The Commissioners. College (2019–2024). *ec.europa.eu* [online], 2022 [viewed 23 January 2022]. Available from: [https://ec.europa.eu/commission/commissioners/2019-2024\\_en](https://ec.europa.eu/commission/commissioners/2019-2024_en); Directorate-General for Communication. Former Colleges of Commissioners. *ec.europa.eu* [online], 2022 [viewed 23 January 2022]. Available from: [https://ec.europa.eu/info/about-european-commission/visit-european-commission/libraries-and-archives/former-colleges-commissioners\\_en](https://ec.europa.eu/info/about-european-commission/visit-european-commission/libraries-and-archives/former-colleges-commissioners_en)

<sup>56</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 79–80.

a majority in parliament. In the present case, the Commission is not set up from political parties, but each Commissioner is selected by their overall competence and European spirit (commitment to the idea of European integration) from among persons who offer every guarantee of independence and are proposed by the respective national governments. Partisan affiliation to groups in the Parliament or parties and movements in a Member State is not important, nor is it to the persons' detriment if they are members of the weakest political group.<sup>57</sup> As Commissioners, except for the President of the Commission and the High Representative for FASP, are nominated by Member States and chosen by the President of the Commission, with all 27 members of the "cabinet" as a group to be subsequently approved by the Parliament and appointed by the European Council, that clearly demonstrates the complex process of instituting the Commission. On the other hand, it is a process that requires the reaching of a broad agreement on several levels. Commissioners must have political support in their home countries in order to be nominated, must exhibit a high level of proficiency (a former politician or a top expert and official, for example), need to be on good terms with the President of the Commission and, last but not least, must get through the grilling in the Parliament, be approved by the EP and appointed by the European Council. In my opinion, this process ensures that the multinational Commission will operate as expected and any radical value-related and political splitting is prevented. I believe that this information demonstrates that the arrangement of the executive of the EU only corresponds to the consensus model of democracy (the two of them). I draw this conclusion from that the Commission consists of 27 members, one from each Member State, with each Commissioner bearing specific "ministerial" responsibilities.<sup>58</sup> Last but not least, the Commission operates, in my opinion, as a broad and permanent multinational coalition that brings together both the right and the left wings of the political spectrum in the Union, which corresponds to the oversized government in Lijphart's concept.

## **2.2 Relationship between the Executive and Legislature**

In respect of the relations between the executive and legislature, it is necessary, according to Lijphart, first to define whether the system is a parliamentary or presidential regime. Lijphart gives three main differences that are typical of these regimes. The first difference is that in the parliamentary system the head of government, who may be referred to as prime minister, chancellor, taoiseach (in Ireland) or minister president, is alone or together

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<sup>57</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 173.

<sup>58</sup> For example, responsibility for: economy; agriculture; internal market; innovation, research, culture, education and youth; health and food safety; justice, etc.

with the government dependent on enjoying confidence of the parliament. Otherwise the head of parliament is referred to as president, who is always elected for the term laid down in the constitution, and under normal circumstances the parliamentary vote of lack of confidence cannot force the president to resign. The second difference consists in how president is elected and how prime ministers are selected. The third and final major difference is the collegiality of the cabinet. In the parliamentary regime, the position of the prime minister can range from a strong position to a position of equality with other members of the cabinet. However, the usual arrangement involves a higher degree of dependence of the prime minister on the rest of the government. Decisions are adopted by the entire cabinet, rather than just the prime minister, which is the case with the presidential regime, in which cabinet members are only an advisory and subordinate body of the president because the president can make the most important decisions against the cabinet's advice.<sup>59</sup> Another example is the compatibility of a ministerial office with parliamentary mandate. The usual arrangement in presidential regimes is that a role in legislature is incompatible with an office in the executive branch. The United States are an example, where cabinet officials do not come from among senators or members of the House of Representatives but are chosen from non-political sphere. Yet exceptions have occurred, such as Hillary Clinton in Barack Obama's administration.<sup>60</sup> As the EU is not a typical state, and its structures are very complex and interconnected, the following part of the chapter will first define the hierarchy and positions of the most important institutions and functions<sup>61</sup> with a role in the relationship between the executive and legislature and then formulate the particular relations and powers between them.

### **2.2.1 Form of Branches of Power**

As mentioned above, what plays a considerable role in instituting the Commission as the executive branch on supranational level is the European Council, which proposes the President of the Commission to the Parliament and appoints the High Representative for FASP and the Commission as a whole. The European Council is the Union's supreme political body at the level of intergovernmental cooperation that elects its permanent President, whose task is to convene the Council's meetings.<sup>62</sup> The President of the European Council, also referred to

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<sup>59</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 105–107.

<sup>60</sup> SYLLOVÁ, J. et al. *Parlament České republiky*. 2nd ed. Prague: Linde, 2008, pp. 24–25.

<sup>61</sup> The European Council, the Commission, the Council, the European Parliament, President of the European Council, President of the European Commission, the High Representative for Foreign Affairs and Security Policy, and President of the European Parliament.

<sup>62</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 160.

as the President of the Union that was envisaged in the rejected European Constitution,<sup>63</sup> is elected by qualified majority for a term of two years and a half with the possibility of renewing his mandate once. The permanent President's task is to lead and chair the meetings of the European Council, which are held at least twice every six months, usually in Brussels and in camera. The President organises the meetings in cooperation with the President of the Commission and, on the basis of the work of the General Affairs Council, ensures the preparations for and the continuity of the proceedings of the European Council. Along with the respective Member States' prime ministers or heads of states<sup>64</sup>, the permanent President and the President of the Commission are members of the European Council but have voting rights. Meetings are also attended by the High Representative for FASP, but not as a member.<sup>65</sup>

However, it is rather difficult to decide whether the President of the European Council could be regarded as a regular president, that is, a president equivalent to the Czech Republic's supreme constitutional official, given how the Council's President's powers overlap with those of the Commission's President. On the other hand, the Council's President is the highest-ranking person in respect of intergovernmental cooperation in the European Council. As already said, the permanent President chairs and leads the proceedings of the European Council while working with the President of the Commission. Another equally important role is that the permanent President seeks to facilitate coherence and consensus in the European Council and operates as a "liaison officer" between the European Council and the Parliament, reporting to the Parliament after each meeting of the Council. In terms of external activities, the President of the European Council represents the EU externally in matters related to CFSP, this being without prejudice to the powers of the High Representative of the Union for FASP.<sup>66</sup> This is one of the attributes of the executive role given to the President of the European Council. For example, the President's role is to represent the Union at summits with third countries (e.g. bilateral EU-US summits).<sup>67</sup> On the other hand, the Commission as a whole is also empowered to represent the Union externally, except for CFSP and other affairs as laid down in the

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<sup>63</sup> NOVÁK, P. et al. Evropská unie si zvolí 'prezidenta' a 'ministra zahraničí'. *iROZHLAS.cz* [online], 19 November 2009 [viewed 23 January 2022]. Available from: [https://www.irozhlas.cz/zpravy-svet/evropska-unie-si-zvoli-prezidenta-a-ministra-zahranici-200911191854\\_aadamkova](https://www.irozhlas.cz/zpravy-svet/evropska-unie-si-zvoli-prezidenta-a-ministra-zahranici-200911191854_aadamkova); ČTK. Prvním „prezidentem“ EU bude belgický premiér Van Rompuy. *Euroskop.cz* [online], 19 November 2009 [viewed 23 January 2022]. Available from: <https://www.euroskop.cz/38/14492/clanek/prvnim-prezidentem-eu-bude-belgicky-premier-van-rompuy/>

<sup>64</sup> It is the sole discretion of Member States who will represent them. With some exceptions, the Czech Republic's current practice has been to be represented by prime minister at the meetings of the European Council.

<sup>65</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 160–161; HAMULÁK and STEHLÍK: *European Union constitutional law...*, pp. 38–39.

<sup>66</sup> Consolidated version of the Treaty on European Union. Official Journal C 202/13, 7 June 2016, Article 15(6).

<sup>67</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 161.

Treaties.<sup>68</sup> Other major players in external representation, in addition to the President of the European Council and the High Representative for FASP, are the Commission and its President.<sup>69</sup> That leaders or representatives of other countries may not be sure about the roles of the Union's presidents may also be indicated by an incident during a visit to Turkey in April 2021 when the President of the Commission was seated on the sofa whereas the President of the European Council was sitting next to the President of Turkey in a chair.<sup>70</sup> However, as Politico remarks, the tension between the two roles has been nothing new. The increased tension between the two roles began with the Treaty of Lisbon taking effect because the Treaty established the role of the President of the European Council. Until then, that role had been played by the leader of the country currently holding the rotating presidency of the Council of the EU. The adoption of the Treaty of Lisbon started to generate tension among the Presidents. Let us take the year 2012 as an example. That year the Union was awarded the Nobel Peace Prize, and the speech was delivered jointly by Herman Van Rompuy, the President of the European Council, and José Manuel Barroso, the President of the Commission, whereas the prize was handed to Martin Schulz, the President of the European Parliament. The "incident" has aggravated the heated debate as to who the actual leader of the EU is. For example, Jean-Claude Juncker, a former Commission President, said in 2017 that the Union would function better and be better understood if the roles of Commission President and European Council President merged.<sup>71</sup> Last but not least, it should be mentioned that the European Council had not become a major institution until the Treaty of Lisbon took effect. Before that, the Council had been missed out in the list of main Community institutions.<sup>72</sup>

As mentioned above, what is included in the institutional triangle apart from the Commission is the Council and the Parliament because they are institutions that hold law-making responsibilities in particular. Historically also known as the Council of Ministers or the Council of the European Union, the Council has been taking a fundamental part in the EU's decision-making processes since the very beginnings of European integration. Seated in

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<sup>68</sup> Consolidated version of the Treaty on European Union. Official Journal C 202/13, 7 June 2016, Article 17(1).

<sup>69</sup> HAMULÁK and STEHLÍK: *Praktikum práva Evropské unie...*, p. 26.

<sup>70</sup> ČTK, iDNES.cz. Ehm, kam si sednu já? Bezradnou Leyenovou u Erdogana odsunuli na pohovku. *iDNES.cz* [online], 7 April 2021 [viewed 23 January 2023]. Available from: [https://www.idnes.cz/zpravy/zahranicni/turecko-recep-tayyip-erdogan-charles-michel-ursula-von-der-leyen.A210407\\_104031\\_zahranicni\\_kha](https://www.idnes.cz/zpravy/zahranicni/turecko-recep-tayyip-erdogan-charles-michel-ursula-von-der-leyen.A210407_104031_zahranicni_kha)

<sup>71</sup> HERSZENHORN, D. and M. DE LA BAUME and J. BARIGAZZI. Presidential power wars: Von der Leyen vs. Michel. *POLITICO.cz* [online], 29 April 2021 [viewed 23 January 2022]. Available from: <https://www.politico.eu/article/battle-in-the-bubble-ursula-von-der-leyen-and-charles-michel-clash-for-presidential-primacy/>

<sup>72</sup> HAMULÁK, STEHLÍK: *European Union constitutional law...*, pp. 38–39.



Brussels, the Council is composed of the Member States' pertinent ministers.<sup>73</sup> Although being a single body, the Council meets in ten different configurations depending on the particular agenda discussed (e.g. justice and home affairs, foreign affairs, agriculture and fisheries, etc.).<sup>74</sup> The Council meets in configurations comprised of Member States' pertinent ministers. This is the first of the three levels of organisational structure, in a narrow sense. The second level is the Committee of Permanent Representatives (COREPER) and special committees, and the third level is working groups. Since the Council is a non-permanent body with its President, unlike the Commission and the European Council Presidents, elected for a prescribed period, an important role is played by COREPER, which is the preparatory body in relation to the Council's meetings. Usually meeting in two configurations, COREPER is to work with the Secretariat-General and Commission representatives to seek consensus among Member States.<sup>75</sup> The last institution referred to in this chapter is the Parliament, which, interestingly, has three seats. The plenary regularly meets in Strasbourg. Some plenary sessions are held in Brussels. Committees meet in Brussels and the secretariat's seat is in Luxembourg.<sup>76</sup> The Parliament is headed by President and President's term of office is two years and a half and can be extended. President's main role is to supervise the business of the Parliament and its various components and ensure compliance with the EP's Rules of Procedure. Together with Council President, European Parliament President also signs all the legislative acts adopted under the ordinary legislative procedure.<sup>77</sup>

In any case, my conclusion about the type of the EU's political system is that it is a parliamentary regime. This is readily supported by several facts that correspond to Lijphart's classification:

1. The "executive body" (the Commission) is dependent on the will and votes of the European Council and the confidence of the Parliament;
2. The leader of the Commission is referred to as President and the President's position is dependent on the confidence of the European Council and the Parliament, so both the President and all Commission can be dismissed from office.

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<sup>73</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 161; HAMULÁK and STEHLÍK: *European Union constitutional law...*, p. 40.

<sup>74</sup> General Secretariat of the Council. Council configurations. *Consilium.europa.eu* [online], 6 October 2020 [viewed 23 January 2022]. Available from: <https://www.consilium.europa.eu/cs/council-eu/configurations/>

<sup>75</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 162–164.

<sup>76</sup> *Ibid.*, p. 168.

<sup>77</sup> European Parliament. Předseda nebo předsedkyně Evropského parlamentu. *Europarl.europa.eu* [online], 2022 [viewed 23 January 2022]. Available from: <https://www.europarl.europa.eu/about-parliament/cs/organisation-and-rules/organisation/the-president>

3. The President of the European Council is not officially referred to as the supreme “constitutional” official of the EU, and although elected for a prescribed period of time, the elections are not direct and removing European Council President from office is easier than removing U.S. president, for instance;
4. Council President chooses his/her “ministers” at his/her discretion from among the candidates nominated by Member States in the European Council;
5. As Commission decisions are adopted by a majority of the votes of Commission members, all members are essentially equal, with each member’s vote having the same weight<sup>78</sup>; and
6. The Commission is not subordinate to the President of the European Council because the two institutions should cooperate with each other.

### **2.2.2 Relationship between Commission and Legislature**

Now let me discuss the relations of the Commission, which in my opinion is the Union’s most important executive body at the supranational level, which represents the interests of the Union. Although also considered to be an executive arm, the European Council, in contrast to the Commission, primarily represents the interests of individual Member States. However, the differences are not so pronounced because the Commission also has intergovernmental characteristics, just as the European Council has supranational.<sup>79</sup> As already said, the first aspect of the EU’s political system is that Commission President<sup>80</sup> is nominated by the representatives of the countries in the European Council by a qualified majority on the basis of the results of the elections to the Parliament, with a majority of the votes of all MEPs being required for election. Other Commissioners<sup>81</sup> are subsequently nominated by Commission President on the basis of proposals from those Member States which did not produce either Commission President or the High Representative for FASP. After that, Commissioners are “grilled”<sup>82</sup> in the Parliament and the Commission as a whole<sup>83</sup> is put to roll call vote (a majority of the votes cast is required for voting into office), and the Commission is appointed by the

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<sup>78</sup> Consolidated version of the Treaty on the Functioning of the European Union. Official Journal C 202/47, 7 June 2016, Article 250.

<sup>79</sup> TOSATO, G. L. The Institutional Framework of the European Union. In: AMATO, G. et al. (eds.). *The history of the European Union: Constructing Utopia*. Portland, Oregon: Hart, an imprint of Bloomsbury, 2019, p. 153

<sup>80</sup> For the purpose of this thesis, Commission President can be referred to as prime minister by analogy.

<sup>81</sup> For the purpose of this thesis, Commissioners can be referred to as ministers by analogy.

<sup>82</sup> This process may result in the refusal of particular Commissioner candidates. The established practice is that Commission President will supply a substitute candidate in order to ensure winning a vote of confidence in the Parliament.

<sup>83</sup> For the purpose of this thesis, the Commission as a whole can be referred to as government or executive body by analogy.

European Council. The European Council's position vis-à-vis the Commission after that process is considerably weaker because the Commission is accountable to the Parliament, which enjoys a number of rights and owes a number of duties in relation to the Commission. Another debilitating aspect is the interval after which national governments can announce Commission nominees that accord to their own political views; once a Commissioner is elected, the national government is not permitted to withdraw that Commissioner. Still, the European Council continues to be the Union's supreme political body and sets and determines the Union's future political direction and priorities.

The second most important control mechanism is that the Parliament may vote on an MEP motion to censure the Commission, with two-thirds of the votes cast and a majority of all MEPs required for the motion to be passed.<sup>84</sup> This is the regular institute of censure whereas the institute applied in the Federal Republic of Germany is termed constructive censure.<sup>85</sup> In spite of resignation Commission members continue to handle the usual business until a new Commission takes over. The Parliament's last important power vis-à-vis the Commission is the right for the committees and political groups in the Parliament to address questions orally or in writing.<sup>86</sup> On the other hand, the Parliament enjoys no legislative initiative, which is exclusively vested in the Commission;<sup>87</sup> however, it may request, by a majority of all MEPs, that the Commission should table a good draft for matters in respect of which the Parliament believes that an act of the Union is required for the implementation of the Treaties. The Commission may refuse to grant the request but has to communicate reasons for the refusal.<sup>88</sup> Another area where the Commission's strength is weaker is the Union budget for the following calendar year. This is evidence of the proportional distribution of powers among the Commission, the Parliament and the Council: draft budget is presented by the Commission, with the Parliament and the Council taking a considerable part in adopting the budget. If disagreements occur in the process of adoption, the Parliament participates in the conciliation procedure through the Conciliation Committee. The transparency of the budget is also ensured at a later stage by the Commission annually submitting the final account to the Council and the Parliament, the two

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<sup>84</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 171, 174.

<sup>85</sup> For a government to be censured, a new government needs to be selected at the same time; SARTORI, G. *Srovnávací ústavní inženýrství: zkoumání struktur, podnětů a výsledků*. 2nd ed. Prague: Sociologické nakladatelství, 2011, pp. 115–116.

<sup>86</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 171; Consolidated version of the Treaty on the Functioning of the European Union. Official Journal C 202/47, 7 June 2016, Articles 230, 234.

<sup>87</sup> HAMULÁK and STEHLÍK: *European Union constitutional law...*, p. 46.

<sup>88</sup> Consolidated version of the Treaty on the Functioning of the European Union. Official Journal C 202/47, 7 June 2016, Article 225.

of which being able to grant the Commission budgetary discharge.<sup>89</sup> And this is the last item on the list of the Parliament's major powers vis-à-vis the Commission. Besides the monopoly of legislative initiative, the Commission enjoys extensive scrutiny powers and is generally regarded as the guardian of legal compliance in the Union. If the Commission establishes that a Member State is in breach of EU law, and the Member State fails to make remedy, the Commission is authorised, through Article 258 of TFEU, to bring an action against the Member State before the Court of Justice of the European Union. Also, the Commission plays a key role in the EU's external relations by, for instance, initiating negotiations on international treaties or the execution of such treaties.<sup>90</sup>

Looking at the relations between the Commission and the Parliament may give an impression that the Commission's role is superior. However, this impression is transformed if the Council is taken account of. The Council is a body that has had an important position in the Union's institutional structure since the beginning of European integration and represents the national interests of Member States.<sup>91</sup> The Council takes an essential part in the decision-making processes in the Union and all major decisions in the Union require the Council's consent. Moreover, the Council plays an important role in executing international treaties and is vested with scrutiny powers by the Treaties.<sup>92</sup> "George Tsebelis and Jeannette Money call the Council 'the European equivalent of [an] upper house'."<sup>93</sup> Therefore, it is beyond any controversy that the relation between the executive and legislature corresponds to the consensus model of democracy. However, a question arises whether or not the political system's arrangement should be classified on the democracy model axis under type 1 (closer to consensus model) or type 2 (full consensus model). As already said, the institutional triangle plays a key role in the Union's decision-making and law-making processes. As the relations among those institutions are very much interconnected and relatively equal, it is quite appropriate to maintain that none of them can properly work without the other. Plus there is the European Council, which is also considered part of the executive branch and a paramount political body. However, seen solely through the lens of supranational level, the Council's position in the relationships between legislature and the executive tends to receive less importance after Commission is elected, provided no account is taken of that the Council sets

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<sup>89</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 171.

<sup>90</sup> *Ibid.*, pp. 175–176; HAMUĽÁK and STEHLÍK: *European Union constitutional law...*, pp. 46–47.

<sup>91</sup> HAMUĽÁK and STEHLÍK: *Praktikum práva Evropské unie...*, p. 21.

<sup>92</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 161; HAMUĽÁK and STEHLÍK: *European Union constitutional law...*, p. 43.

<sup>93</sup> LIJPHART: *Patterns of Democracy...*, 1999, p. 43; LIJPHART: *Patterns of Democracy...*, 2012, p. 41.

the course of European integration. My conclusion is that the relationship between the executive and legislature is purely consensual (two). What has led me to that conclusion is that the role of the European Council with its “President” in the law-making process is rather representative and Council President is appointed through agreement among the leaders of Member States rather than elected in direct elections by the citizens of the Union. The European Council only holds a strong position at the beginning of the Commission-instituting process but loses a considerable degree of that significance once Commission is approved, without having any legislative initiative. Another marked aspect that supports my view is the positions of the Commission and the EP in the institutional triangle. Legislature has a strong position and its powers weaken the strength of the Commission, which is dependent on winning and retaining confidence of the Parliament. According to Lijphart, the institute of declaring (no) confidence is one of the main criteria for the consensus model of democracy. Another opportunity for the Parliament to scrutinise how the Commission performs lies in asking parliamentary questions orally or in writing. Again, the Commission does not have a very strong position in respect of budget as the power is distributed proportionally among the Commission, the EP and the Council.

### **2.3 Party System**

The Parliament consists of 705 members (“MEPs”) elected in the 27 Member States of the Union. Since the first direct elections in 1979, elected MEPs have been grouped in political groups (factions), where they are organised by political affiliation rather than country. The formation of a political group requires a minimum of 23 MEPs and representation of a minimum of one quarter of the states. MEPs can only be attached to one political group. It is not their duty to be in a political group; MEPs who are not in any group are referred to as non-attached MEPs. Current Parliament includes the following seven political groups: Group of the European People’s Party (Christian Democrats) (EPP), Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (S&D), Renew Europe Group (RE), Group of the Greens/European Free Alliance (Greens/EFA), Identity and Democracy Group (ID), European Conservatives and Reformists Group (ECR), The Left group in the European Parliament GUE/NGL (The Left or GUE/NGL).<sup>94</sup> Before identifying the nature of the party system, it is important to mention that, according to Arend Lijphart, the party system can be one of the

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<sup>94</sup> European Parliament. The Political groups of the European Parliament. *Europarl.europa.eu* [online], 2022 [viewed 23 January 2022]. Available from: <https://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/organisation/political-groups>

typical and most important differences between models of democracy because it symbolises the contrast between the concentration of power on the one hand and the sharing of power on the other hand. It is believed that the two-party system has direct and indirect advantages over the multi-party system. The first significant advantage is that voters only choose between two policy alternatives. The second advantage is that parties have to compete for undecided voters in the centre of the political spectrum, this ensuring that parties would not shift away from each other to either extreme of the political spectrum.<sup>95</sup>

In order to determine the model of democracy in the party system dimension, I will use Giovanni Sartori's party system typology and apply it to the political groups in the Parliament. I will do so despite the fact that the later development of party systems from the 1980's has demonstrated some issues in Sartori's theory that pose a problem with establishing dominance in the right-left axis.<sup>96</sup> Even Lijphart himself views part of this theory controversial and unacceptable. Lijphart holds that Sartori's theory is not well usable for counting parties in the party system, but instantly adds that his criteria are very useful for distinguishing between the parties that enjoy a significant role in the party system and those that do not.<sup>97</sup> I oppose this opinion and will count parties using Sartori's typology. After all, Lijphart's democracy model theory itself has not been spared from criticism.<sup>98</sup> Sartori's typology is based on two-dimension attribution. However, the first step should be to distinguish between classification and typology. Determining the class of the party system is a classification based on a single criterion (the number of relevant political groups<sup>99</sup> in the Parliament).<sup>100</sup>

A relevant party is any party with coalition or blackmailing potential. A marginal party may be relevant party provided that its votes influence inter-party competition. Conversely, the party with the highest number of seats may not be a relevant one because other parties are reluctant to cooperate, the party's votes do not have any influence on inter-party competition, and the party stands alone in the political spectrum.<sup>101</sup> Sartori has identified seven classes: single-party class, hegemonic party class, predominant party class, two-party class, limited pluralism class, extreme pluralism class, and atomised class. The second part of Sartori's identification of the party system includes a criterion that covers communication between

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<sup>95</sup> In my opinion, these claims are relative and may in some cases become a disadvantage; LIJPHART: *Patterns of Democracy*..., 2012, pp. 60–61.

<sup>96</sup> Controversial issues are the concept of anti-system party and the term *polarisation*; HLOUŠEK and KOPEČEK and ŠEDO: *Politické systémy*, p. 211.

<sup>97</sup> LIJPHART: *Patterns of Democracy*..., 2012, pp. 63–64.

<sup>98</sup> For instance, Lane and Ersson; HLOUŠEK and KOPEČEK and ŠEDO: *Politické systémy*, pp. 72–75.

<sup>99</sup> For the purposes of this thesis, a *political group* means a political party.

<sup>100</sup> HLOUŠEK and KOPEČEK and ŠEDO: *Politické systémy*, p. 213.

<sup>101</sup> *Ibid.*, p. 208; SARTORI: *Strany a stranické systémy*..., pp. 125–130, 136.

parties, segmentation, partisan ideology, and willingness for inter-party cooperation. On this basis, the following types of competition party systems can be distinguished: bipartism, moderate pluralism, polarised pluralism, atomised type, and predominant party system.<sup>102</sup> The combination of the above-mentioned criteria creates a typology that is based on more than one criterion. Given the multinational nature of the EU, those criteria, which I use in identifying the Parliament's party system, are also influenced by the electoral system, which is just one in a number of variables. Another problem is the different political moods and directions present in the individual Member States; in my opinion those moods and directions are completely independent of each other. Multiple cleavages can occur in national elections as well as elections to the Parliament. For example, the situation before the 2019 election clearly indicated that the EU's political scene would be on the verge of a political upheaval, which proved true eventually. On one side were the populists, and on the other side was a new wave of new neglected transnational parties. This may ultimately lead to that the line of conflict will only consist in being for or against the Union, and constructive topics will be overshadowed as a result. This problem is also intensified by that the system of elections to the Parliament has been that people choose from their home country parties rather than the EP political groups. This in fact results in people taking no part in the supranational interests and failing to promote the joint development of the supranational entity of which they are members.<sup>103</sup> In my opinion, all these aspects and variables have impacts on the composition of the political groups in the Parliament and can(not) invalidate the application of Sartori's typology, which takes account of classic elections in national states.

Since 2004, when the Czech Republic joined the EU, the number of political groups has been relatively stable, that is seven, except for the 2014–2019 term, when the outgoing Parliament included eight political groups. There have been no profounder changes than the renaming or merging of political groups, for instance the creation of the European Conservatives and Reformists Group in 2009.<sup>104</sup> These facts make me draw a conclusion that the party system falls into the extreme pluralism class since six to eight parties is the dividing line as to the number of parties (political groups).<sup>105</sup> In any case, it is quite problematic to

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<sup>102</sup> HLOUŠEK and KOPEČEK and ŠEDO: *Politické systémy*, p. 213.

<sup>103</sup> ALEMANNI, A. Europe Up for Grabs: The Looming Battle Lines of the 2019 European Parliament Elections. *CarnegieEurope.eu* [online], 27 June 2018 [viewed 23 January 2022]. Available from: <https://carnegieeurope.eu/2018/06/27/europe-up-for-grabs-looming-battle-lines-of-2019-european-parliament-elections-pub-76691>

<sup>104</sup> European Parliament. 2019 European election results (2014–2019). European Parliament. *Europarl.europa.eu* [online], 2019 [viewed 23 January 2022]. Available from: <https://www.europarl.europa.eu/election-results-2019/en/european-results/2014-2019/outgoing-parliament/>

<sup>105</sup> SARTORI: *Strany a stranické systémy...*, p. 131.

determine whether a party system is moderate pluralism, polarised pluralism, or atomised type. The atomised type is characterised by no political entity having any discernible effect on other entity and each entity pursuing radically different goals and paths.<sup>106</sup> Both the Commission and the national parties in political groups in the Parliament<sup>107</sup> form broad and lasting multinational coalitions. Taking a look at the two historically strongest political groups, EPP and S&D, the former can be described as a centre-right bloc that brings together conservative and liberal-conservative pro-integration political parties. On the other hand, S&D, as the name suggests, is a group of social democratic parties. RE is the successor to the Alliance of Liberals and Democrats for Europe, which was renamed in June 2019 after merging with the MEPs of president Emanuel Macron's Revival party and is politically profiled as a liberal, centrist and strongly pro-integration group. The last party besides RE with relatively close ideological affiliation to EPP is ECR; although taking a reserved attitude to integration and refusing any activity aimed at the federalisation of the EU, ECR does support a certain kind of union, within the framework of subsidiarity and the preservation of the sovereignty of national states. On the other side of the political spectrum, close to the left-wing S&D, are Greens/EFA, a group being more to the Union's left than S&D is and bringing together MEPs of European green parties and MEPs representing minorities and regional groupings. Last two political groups can be characterised as extreme-oriented. ID is a far-right populist entity that takes a very strongly critical and negative view of the project of European integration. On the far left of the political spectrum stands The Left, who are also based on Euroscepticism and bring together the parties of the new European left, communist parties, and Nordic left green groupings.<sup>108</sup>

What follows from the above ideological analysis of the Parliament's political groups is that the party system does not correspond to the atomised type typology. On the one hand, it is clear that the groups can be placed on the classical political spectrum axis without any difficulties (right, centre, and left); on the other hand, there are groups of parties that are very close to each other and overlap politically in some matters and, last but not least, there are no signs of the Parliament being paralysed and unable to vote on legal acts. Consequently, defining polarised pluralism is what yet needs to be done to determine whether the party system falls

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<sup>106</sup> Ibid.

<sup>107</sup> The Parliament includes all segments of the political spectrum.

<sup>108</sup> Oddělení institucionální komunikace ÚV ČR. Politické skupiny v EP. *Euroskop.cz* [online], 2022 [viewed 23 January 2022]. Available from: <https://www.euroskop.cz/9254/sekce/politicke-skupiny-v-ep/>; NORDSIECK, W. Parties and Election in Europe. European Union. *Parties-and-elections.eu* [online], 2019 [viewed 23 January 2022]. Available from: <http://www.parties-and-elections.eu/eu.html>



into this category or the category of moderate pluralism. Polarised pluralism is identified by Sartori through eight criteria consisting in:

1. Presence of relevant anti-system parties;<sup>109</sup>
2. Existence of bilateral oppositions that agree on a negative attitude towards existing policies but are unable to work together within the negative attitude;
3. Political centre occupied by at least one relevant party;
4. High fragmentation of political positions, with a considerable ideological distance between political actors;
5. Centrifugal tendencies that make the political spectrum's centre weaker;
6. Ideological structuring;
7. Presence of irresponsible oppositions; and
8. Trumping politics, with political entities trumping their competitors with still better pre-election promises without taking any account of whether a promise can be delivered and what it entails if delivered.<sup>110</sup>

Considering the theoretical definition of polarised pluralism, I come to the conclusion that the party system stands on the borderline. I tend to take the view that the system is moderate pluralism with multipolar functional logic and limited competition in the formation of coalitions, and with a relevant anti-system party (The Left and ID) on each side of the political spectrum. Adding together the seats of the closest political groups, S&D along with Greens/EFA on the one hand and EPP along with RN and, with a pinch of salt, ECR on the other hand, it is clear that neither coalition has held a majority of seats in the Parliament since 2004.<sup>111</sup> These “coalitions of coalitions” hold views different from those of the other, and would need support from the radical entities or unattached MEPs in order to get a majority; such cooperation, however, seems quite problematic. The centre of the political spectrum is occupied by a relevant political group (RE). Another point is the high fragmentation of political positions, but saying “at a considerable ideological distance” is difficult because all ideological trends are represented. In any case, it is certain that the far left and the right are ideologically distant from each other. The Parliament, the Council, the Commission and the European Council show no signs of centrifugal tendencies. Generally speaking, the Union is based on consensus and

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<sup>109</sup> But what is an anti-system political entity? It is an entity that opposes the regime and undermines its legitimacy, seeking to change not only the government, but also the very system of governance. In particular, it is entities of the Nazi, Fascist or Communist types, such as NSDAP in Germany).

<sup>110</sup> SARTORI: *Strany a stranické systémy...*, pp. 136–145.

<sup>111</sup> European Parliament. 2019 European election results (2004–2009). European Parliament. *Europarl.europa.eu* [online], 2019 [viewed 23 January 2022]. Available from: <https://www.europarl.europa.eu/election-results-2019/en/european-results/2004-2009/constitutive-session/>

cooperation, given its multinational composition, and any such centrifugal tendencies could have detrimental consequences for the future development of the EU. The Parliament is definitely structured ideologically, and if I should exaggerate, I could conclude that the far Left and ID are irresponsible political groups. However, they have held a marginal position and had very limited impacts on the future development of the Union. The last point is the trumping politics. As already said at the beginning of this chapter, voices are heard claiming that national parties rather than political groups are elected by European voters as yet, and I am of the same opinion. Thus, if anything like that has been taking place in the Parliament, it has had a minimum effect on potential voters because what seems to be the cleavage is the conflict between for the EU and against the EU.

Since Sartori's classes put the party system in the Parliament in the extreme pluralism class, the system's arrangement corresponds to the pure consensus model of democracy (two). Arend Lijphart envisages a multi-party system for the consensus model of democracy, and the assumption is fulfilled in this case; no political group comes close to holding a majority in the Parliament. The second criterion is the assumption of a pluralistic society divided along a number of conflict lines (ethnic, religious, linguistic, and socio-economic differences). The result is that entities represent individual population groups in such a society and form broad coalitions.<sup>112</sup> Although I claim in the previous paragraph that it is the options *for* versus *against* the EU that are the voter line of conflict, that assumption is undoubtedly fulfilled if account is taken of that Lijphart does not refer to elections but a pluralistic society divided into groups along a number of cleavages. The Union certainly is a multinational and a multicultural pluralistic society. Diverse ethnic (France), religious (Germany), and linguistic (Belgium) groups can be found in Member States, let alone the Union taken as a whole. Making a reduction produces a conclusion that the Parliament's political groups are composed of the national parties elected in Member States rather than created through direct elections. In their countries, these national parties have a core of voters the majority of which fall into a certain social group (ethnic, linguistic, and religious criteria). Therefore, the Parliament's political groups are composed of elected national party MEPs on the basis of multiple conflict lines although the political competition is primarily divided along the for-versus-against-EU line.<sup>113</sup>

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<sup>112</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 35–36.

<sup>113</sup> TOP 09 may be taken as an example in the Czech Republic; the party tends to be usually elected by urban liberal voters whereas the voter core of KDU-ČSL is countryside conservative Christian-minded people.

## 2.4 Electoral System

The consensus model of democracy is conditioned by a proportional electoral system formed by a larger number of political parties and thus facilitating a larger representation. The only directly elected body in the Union is the Parliament; EU citizens could vote their MEPs for the first time in 1979.<sup>114</sup> Although elections are held regularly after five years between Thursday and Sunday, the multinational nature of the EU is the reason why each Member State determines its electoral system, the threshold for allocating seats and the boundaries of electoral districts in accordance with its effective legislation. However, all Member States must apply a system based on proportional representation and the minimum threshold for the allocation of seats may not exceed 5% of the valid votes cast at national level. Also, the right to vote is not uniform. The standard legal age to vote is 18 years in all Member States, except for Austria and Malta, and Greece with the legal ages being 16 and 17 years, respectively. In Belgium, Bulgaria, Luxembourg, Greece, and Cyprus, voting is mandatory for the country's nationals and the registered EU citizens who are nationals of other member states.<sup>115</sup> Another important aspect of elections to the Parliament is that citizens of each Member State do not elect from the Parliament's political groups<sup>116</sup> but from their national parties and these then form the Parliament's groups. As the Union has diametrically different electoral districts that follow the borders of the Member States,<sup>117</sup> each state has a different minimum electoral threshold and electoral formula, and each state has available a different number of seats, it is a question whether or not the EU's electoral system should be described as one based on fair proportional representation. Information on electoral districts, preferential votes, minimum electoral thresholds, electoral formulas and the number of seats allocated for each Member State is presented in the following Table 2.

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<sup>114</sup> The Council, the Commission and the European Council are indirectly elected bodies, where the primary role is played by national parliamentary elections, which produce national governments, which delegate their representatives to the aforesaid institutions.

<sup>115</sup> SOKOLSKA, I. The European Parliament: electoral procedures. *Europarl.europa.eu* [online], May 2022 [viewed 23 January 2022]. Available from: <https://www.europarl.europa.eu/factsheets/en/sheet/21/evropsky-parlament-volebni-postupy>

<sup>116</sup> Also referred to as political parties so far in this master's thesis.

<sup>117</sup> Some countries, such as Ireland, Italy, and Poland, divide their territories into several electoral districts.

Table 2: EU Countries, their Electoral Systems and Seats for Allocation

Member State	Electoral Districts	Electoral List	Minimum Electoral Threshold (%)	Electoral Formula	Seats for Allocation
Belgium	1	preferential votes	5	d'Hondt	21
Bulgaria	1	preferential votes	no	Hare/Niemeyer	17
Czech Republic	1	preferential votes	5	d'Hondt	21
Denmark	1	preferential votes	no	d'Hondt	14
Estonia	1	preferential votes	no	d'Hondt	7
Finland	1	preferential votes	no	d'Hondt	14
France	1	tightly bound	5	Hare/d'Hondt	79
Croatia	1	preferential votes	5	d'Hondt	12
Ireland	3	free/STV <sup>118</sup>	no	Droop/STV	13
Italy	5	preferential votes	4	Hare & largest remainder	76
Cyprus	1	preferential votes	1.8	Droop/largest remainder	6
Lithuania	1	preferential votes	5	Hare/Niemeyer	11
Latvia	1	preferential votes	5	Sainte-Laguë	8
Luxembourg	1	free	no	d'Hondt	6

<sup>118</sup> STV (single transferable vote) is a single transferable vote system, classified by experts under proportional electoral systems.

Hungary	1	tightly bound	5	d'Hondt	21
Malta	1	free/STV	no	Droop/STV	6
Germany	1	tightly bound	no	Sainte-Laguë/Schepers	96
Netherlands	1	preferential votes	no	Hare/d'Hondt	29
Poland	13	preferential votes	5	d'Hondt & Hare/Niemeyer	52
Portugal	1	tightly bound	no	d'Hondt	21
Austria	1	preferential votes	4	d'Hondt	19
Romania	1	tightly bound	5	d'Hondt	33
Greece	1	preferential votes	3	Droop/largest remainder	21
Slovakia	1	preferential votes	5	Droop	14
Slovenia	1	preferential votes	no	d'Hondt	8
Spain	1	tightly bound	no	d'Hondt	59
Sweden	1	preferential votes	4	modified Sainte-Laguë	21

Source: ELECTION-WATCH.EU. Elections to the European Parliament 23–26 May 2019. *Election-Watch.EU* [online], 16 September 2019 [viewed 23 January 2022], pp. 31–32. Available from: <https://www.wahlbeobachtung.org/wp-content/uploads/2019/09/election-watch-eu-eam-ep-2019-final-report-160919.pdf>

The above table shows that the number of methods used in the Union to convert votes into seats is rather high. There are countries where voters can give preferential votes to candidates or even choose the order for all candidates, and on the other hand there are countries with tightly bound electoral lists and voters choosing from parties only. Most countries apply a

minimum electoral threshold and the d'Hondt electoral divisor, which is based on the principle that it is not fair for any party to receive a seat if the party holds a lower average number of votes per mandate than any other party. D'Hondt's electoral formula is the antithesis to Hare's electoral quota, which stands on the concept of proportionality based on minimising absolute differences between the percentages of votes and the percentages of seats. Hare's quota (also known as the simple quota) is the simplest and original formula used by states in elections, and some Member States apply it in elections to the Parliament. Another electoral formula used by Member States is the Sainte-Laguë divisor, which, however, is considered to be a more or less obsolete formula. Its effect is slightly favouring small and medium-sized parties against large ones. The Sainte-Laguë divisor has evolved into a modified divisor, which retains the property of its original, unmodified version, which disadvantages strong parties. However, combining both effects, the modified Sainte-Laguë divisor usually leads to slightly favouring medium-sized political parties. This modified electoral formula is used in Sweden. The second most commonly used electoral formula is applied in Ireland, Greece, Cyprus, Malta, and Slovakia. It is the Droop quota (also referred to as the Hagenbach-Bischoff quota), a modification of the Hare quota. The said electoral formulas in party-list proportional systems include four main variables – electoral district size, electoral formula, minimum electoral threshold, and number and type of scrutinies. These can complement, dampen or enhance each other in various ways, and have a direct impact on the degree of proportionality of the outputs from party competition as opposed to the form of voting. The largest remainder method, used in Italy, Greece and Cyprus, consists in that unallocated seats, if any, will go to the parties with the largest absolute number of unused votes. It is generally believed that this helps small parties over large ones, especially in small electoral districts. The STV system used in Ireland and Malta is similar to Australia's alternative voting. It is based on voters electing individual candidates in multi-seat electoral districts rather than electing parties, and this makes the mechanism a proportional system rather than a majority one, which is the case with alternative voting. STV is associated with the Droop quota; first its value is calculated, followed by counting each candidate's preferences formed on the basis of transferable votes. What is a marked disadvantage of STV is its extremely complex and complicated allocation procedure, and generally speaking, STV produces a rather different form of political party system that primarily depends on the nature of the country.<sup>119</sup> However, the electoral system should undergo minor changes in the 2024

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<sup>119</sup> FARRELL, D., M. *Comparing electoral systems*. London, New York: Prentice Hall/Harvester Wheatsheaf, 1997, pp. 59–85; SARTORI: *Srovnávací ústavní inženýrství...*, pp. 20–24; NOVÁK, M. et al. *Volební a stranické*

elections as Council Decision 2018/994 introduces a mandatory minimum threshold of 2–5% for the electoral districts with more than 35 seats (including the Member States with a single electoral district).<sup>120</sup>

According to Lijphart, the fundamental objective of proportional representation is to ensure that both the majority and the minority are represented. I also observe, as does Lijphart, another significant disparity regarding the different numbers of seats for different countries. Germany and Malta are allocated 96 and six seats, respectively, but Germany's population is approximately 170 times Malta's population. It is therefore clear that the number of seats in the Parliament for states with large populations is reduced in favour of small countries. The result is over-representation of small states and under-representation of large states. It should be noted, however, that the reduction of the number of seats for large states combines the principle of proportional representation and that of equal national representation in a single legislative chamber. Some countries, such as Switzerland, embody these principles in two separate legislative chambers.<sup>121</sup> Given that one of the Union's values is that even small states should be able to influence the Union's political direction, under-representation of large states will be omitted in the following classification. My conclusion is that the EU's electoral system is on the boundary between the consensus and the Westminster models of democracy (zero) because:

1. Each Member State has a different minimum electoral threshold;
2. Different electoral formulas are used that, when combined with other influences, can lead to disproportionality instead of proportionality;
3. Some states' territories are divided into several electoral districts and this, along with the previous aspects, may have a negative effect on the resulting representation in the Parliament as compared to countries with a single electoral district; and
4. Member states' respective electoral lists take different forms.

It was no option for me to classify the electoral system as close to or full Westminster model because it is based on the principles of proportional representation and must use, in each member country, either the electoral list system or the single transferable vote system. On the other hand, I could only identify the EU's electoral system as close to the consensus model if

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*systémy: ČR v mezinárodním srovnání*. Plzeň: Aleš Čeněk, 2004, pp. 19–21, 26–39; CHYTILEK, R. et al. *Volební systémy*. Prague: Portál, 2009, pp. 33–40, 183–200, 227–229.

<sup>120</sup> This may pose a problem in Germany, where minimum electoral thresholds of 5% and 3% had been laid down. However, those decisions were declared unconstitutional by the German constitutional court in 2011 and 2014, respectively; SOKOLSKA, I. The European Parliament: electoral procedures. *Europarl.europa.eu* [online], May 2022 [viewed 23 January 2022]. Available from: <https://www.europarl.europa.eu/factsheets/en/sheet/21/evropsky-parlament-volebni-postupy>

<sup>121</sup> LIJPHART: *Patterns of Democracy*..., 2012, pp. 42, 130.

the voting system were uniform in each Member State. If EU citizens elected from the political groups in the Parliament rather than from their national parties, that would be a significant indicator shifting the electoral system to the position of full consensus model of democracy.

## 2.5 System of Interest Groups

The system of interest groups is the final democracy model criterion at the level of the executive-party dimension; it was not included in the eight criteria as presented in the first book *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (1984) dealing with the consensus and the Westminster models of democracy. The interest groups criterion was added by Lijphart in 1999 as one of the ten criteria in *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. The competitive and uncoordinated pluralism of independent groups corresponds to majoritarian democracy whereas the consensus model is characterised by coordinated and compromise-oriented system of corporatism. Corporatism is also referred to as “democratic corporatism”, “social corporatism” or “neo-corporatism”. What also should be added is that corporatism has two different meanings. The first meaning concerns the system of interest groups that organises the groups into national, specialised, hierarchical, and monopoly organisations. The second meaning concerns the engagement of interest groups in politics. Generally speaking, however, it is quite fair to claim that the two meanings are in mutual accord and conditional on each other.<sup>122</sup> Interest groups are defined in an ample number of definitions. The most general one seems to be that interest groups are voluntarily created social units that have certain goals and an internal structure. Interest groups seek to carry out their material, ideological and individual interests either inside their social units or in relation to other groups, institutions and organisations. In a narrow sense, interest groups are aware of their own interests in relation to groups with opposing or different interests but seek to assert their interests by lobbying government, parliament and other political entities in order to ensure that their interests are taken into account in decision-making. This is about influencing decision-making processes, which are the most important function of interest groups, and can also be expressed as that interest groups mediate interests between society and the state.<sup>123</sup>

Interest groups play a day-to-day role in making and monitoring politics, and their outputs serve as a basis for the EU’s official institutions, which may take that into account in policy-making. It is estimated that 1500 civil society groups existed in the Union round 2003

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<sup>122</sup> Ibid., p. 158–159.

<sup>123</sup> HLOUŠEK and KOPEČEK: *Demokracie...*, p. 233.



that represented national interest groups, politically active large companies and NGOs.<sup>124</sup> That number has increased radically after 2003 and approximately 13,000 registered interest groups currently operate in the Union.<sup>125</sup> This growth has also been a result of new Member States' accessions to the EU. The size and the multinational nature of the Union made the Commission set up a register of interest representatives in 2008. And a transparency register was launched in 2011.<sup>126</sup> The role of this register is to ensure a transparent process of cooperation between the EU institutions and a wide range of organisations and groups defending specific interests that is a legitimate and necessary part of the decision-making process and is intended to ensure that the EU's policies reflect the actual needs of society. The aim is to facilitate proper public scrutiny of the process and to make the EU institutions fully accountable to the citizens of the Union. The above-mentioned transparency register has been set up by the Parliament, the Council and the Commission to ensure transparency as to which interest groups seek to influence the drafting or the implementation of EU policies and legislation. The transparency register contains a database of interest representatives (individuals, groups, organisations and associations) engaged in activities aimed at influencing the Union's decision-making process and policies. The register breaks down into three main elements, namely a public website where interest representatives register up to date information about their activities at EU level, a code of conduct, and a complaints mechanism.<sup>127</sup> In 2021, the Council, by mutual consent with the Parliament and the Commission, adopted new rules to ensure even greater transparency and ethical representation of interests. The scope of the existing register has been extended and laid down a duty for interest representatives to be entered in the transparency register as a precondition for the exercise of certain activities.<sup>128</sup> The transparency register classifies groups into the following sections: professional consultancies/law firms/self-employed consultants; in-house lobbyists and trade/business/professional associations; non-governmental organisations; think tanks, research and academic institutions; organisations representing churches and

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<sup>124</sup> GREENWOOD, J. Organized Civil Society and Input Legitimacy in the EU. In: DEBARDELEBEN, J. and A. HURRELMANN (eds.). *Democratic Dilemmas of Multilevel Governance: Legitimacy, Representation and Accountability in the European Union*. Basingstone: Palgrave Macmillan, 2007, pp. 178–179.

<sup>125</sup> EUROPA. Statistics. *ec.europa.eu* [online], 18 January 2022 [viewed 23 January 2022]. Available from: <https://ec.europa.eu/transparencyregister/public/consultation/statistics.do?action=prepareView&locale=en#en>

<sup>126</sup> EUROPA. Key dates. *ec.europa.eu* [online], 18 January 2022 [viewed 23 January 2022]. Available from: [https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?reference=KEY\\_DATES&locale=en#en](https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?reference=KEY_DATES&locale=en#en)

<sup>127</sup> EUROPA. What is the Transparency Register?. *ec.europa.eu* [online], 18 January 2022 [viewed 23 January 2022]. Available from: [https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?reference=WHY\\_TRANSPARENCY\\_REGISTER&locale=en#en](https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?reference=WHY_TRANSPARENCY_REGISTER&locale=en#en)

<sup>128</sup> EUROSOP. Institucionální záležitosti v květnu 2021. *Euroskop.cz* [online], 10 June 2021 [viewed 23 January 2022]. Available from: <https://www.euroskop.cz/13/37236/clanek/institucionalni-zalezitosti-v-kvetnu-2021/>

religious communities; organisations representing local, regional and municipal authorities, other public or mixed bodies, etc.<sup>129</sup>

However, the Union involves areas where the Commission, the Parliament or the Council consults another EU body on the basis of the TFEU. This happens both within and outside the ordinary legislative process, regardless of whether it is part of exclusive or shared competence. The Parliament or the Council consults the Economic and Social Committee or the Committee of the Regions on the following, for example: measures needed to introduce freedom of movement for workers; directives to introduce freedom of establishment in certain activities; the liberalisation of certain types of services; the adoption of appropriate maritime and air transport provisions; approximation of laws; social policy; public health; consumer protection; economic, social and territorial cohesion; etc.<sup>130</sup> European social policy adds social dialogue, which aims at improving European administration by involving social partners in decision-making and implementing pertinent decisions. This is an essential element of the European social model, enabling partners (corporate management and employees) to make active contributions to the shaping of the social and employment policy. The promotion of social dialogue falls under the tasks of the Commission, which is supposed to promote consultations between social partners at EU level and take appropriate measures to facilitate dialogue. Also, the Commission consults with social partners on the content of proposals. This model has been developing since 1957, distinguishing between bilateral and trilateral social dialogue. Held twice a year at minimum, the trilateral social dialogue summit meeting brings together the Presidency of the Council, the Commission and the social partners. The Parliament emphasises in its resolutions that social dialogue and collective bargaining are key tools for employers and trade unions to ensure fair working conditions and wages, and that strong collective bargaining systems increase Member States' resilience in times of economic crisis.<sup>131</sup>

The pluralism of interest groups can be described as mutual competition of a large number of voluntary organisations, as opposed to corporatism characterised by a limited number of organisations with compulsory or semi-compulsory membership that do not compete with each other. Whereas pluralism splits into strong (USA) and structured (UK), corporatism includes three sub-types: weak (Italy, France), moderate (Germany), and strong (Japan,

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<sup>129</sup> EUROPA. Statistics. *ec.europa.eu* [online], 18 January 2022 [viewed 23 January 2022]. Available from: <https://ec.europa.eu/transparencyregister/public/consultation/statistics.do?action=prepareView&locale=en#en>

<sup>130</sup> Consolidated version of the Treaty on the Functioning of the European Union. Official Journal C 202/47, 7 June 2016, Articles 46, 50(1), 59(1), 91(1), 100(2), 114(1), 157(3), 168(4), 169(3), and 175.

<sup>131</sup> KENNEDY, A. and S. DANESI. Social dialogue. *Europarl.europa.eu* [online], August 2022 [viewed 25 November 2022]. Available from: <https://www.europarl.europa.eu/factsheets/en/sheet/58/social-dialogue>

Switzerland, Austria).<sup>132</sup> Considering the historical development of various groups at Union level, it is clear that the groups and their control have been becoming institutionalised. That could give an impression of shifting from pluralism to strong corporatism. However, it should be kept in mind that strong corporatism presupposes, for example, compulsory membership in the chambers representing individual sectors and their centralisation. France, for instance, where corporatism is weak,<sup>133</sup> has developed certain types of corporatism, but the actual political influence of the surviving advisory and consultative bodies has been very weak. Although trade unions retain a strong degree of autonomy and concentration, the efforts for coordinated action are very low. The United Kingdom has been discussed extensively, but the indisputable fact is that, historically speaking, strong ties between trade unions plus interest groups and the Conservative Party as well as the Labour Party have been present.<sup>134</sup>

I place the Union's system of interest groups in the close-to-consensus model of democracy (one). Placing it in the full consensus model would require the existence of compulsory interest associations, groups and communities for certain groups of persons, and the existence of regulation of these groups by the Union. On the other hand, we have cases where EU bodies have a duty to consult other institutions on legislation, and the existence of structured bilateral or trilateral social dialogue involving a large number of employers and employees; in my opinion, these facts suggest a corporatism of the weak type. However, given the number of all entities registered in the transparency register, it would be inappropriate to claim that the entities are covered by a few groups for negotiating so that the system of interest groups would correspond to the full consensus model of democracy. I was weighing the Westminster/consensus model against the close-to-consensus model. However, the fragmentation and the ever increasing number of pressure or non-pressure groups have made me incline to the opinion described above. It might seem that legislative interest group regulation at EU level shifts the model to strong corporatism; however, also the USA, a typical example of pluralism, have in each of its 50 states adopted a number of codes of conduct and lobbying rules. This has been done as a response to that many people had in surveys expressed concerns about organised interests and their heavy influence on elected representatives. For example, a 2004 American electoral study reads that 56% of respondents reported their belief that: "the government is considerably controlled by a few big interests that take care of

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<sup>132</sup> ŘÍCHOVÁ: *Přehled moderních...*, pp. 182–184.

<sup>133</sup> On my democracy model axis, weak corporatism corresponds to the arrangement on the boundary between the Westminster and the consensus models of democracy.

<sup>134</sup> ŘÍCHOVÁ: *Přehled moderních...*, pp. 189–191.

themselves”.<sup>135</sup> Last but not least, the opinions on the concepts related to interest groups are quite fragmented.

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<sup>135</sup> OZYMY, J. Assessing the Impact of Legislative Lobbying: Regulations on Interest Group Influence in U.S. State Legislatures. *State Politics and Policy Quarterly*, 2010, 10(4), p. 397.

## 3 Constitutional-Territorial Dimension

### 3.1 Territorial Organisation of Power

The territorial organisation of power is the first feature in the constitutional-territorial dimension. Determining the model of democracy requires knowing whether a country is a federal or unitary state. Arend Lijphart attributes decentralisation to federalism and centralisation to unitarism. The subject of federalism is the most typical and drastic method of distribution of power among the components of the state. All democracies have a certain distribution of power. In any case, in the purest majoritarian model, the central parliament supervises not only the state apparatus proper but also the individual decentralised, potentially competing parliaments. On the contrary, the consensus model of democracy is inspired by the opposite goals, which not only guarantee a division of power between central and non-central components of power, but it is the non-centralised components that in practice apply a major portion of power on both levels.<sup>136</sup> Lijphart admits the large number of the definitions of federalism but regards the definition by William H. Riker as the most general one: “Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.”<sup>137</sup> What can also be used to identify federalism is Lijphart’s primary federal principle consisting in a central-regional component with powers and his five basic secondary principles, which are necessary: written constitution; bicameralism; regional governments empowered to be part of the amendment processes of the federal constitution and empowered to amend their own constitutions without federal government’s interference; disproportionately strong or equal representation of regional components in the federal chamber; and decentralised government.<sup>138</sup>

In comparison with other international organisations, the EU is centralised and unified. However, compared with national states, such as decentralised Switzerland, the EU continues to be more of a confederation than a federation.<sup>139</sup> Whether the European Communities and the Union are a federation or a confederation has been extensively debated since their beginnings. However, as the discussions conclude that the EU is not a federation and was not identified for a long time, British political scientist Murray Forsyth has suggested a definition that the Union

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<sup>136</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 174–175.

<sup>137</sup> *Ibid.*, p. 175.

<sup>138</sup> LIJPHART: *Democracies: Patterns of...*, pp. 170–171.

<sup>139</sup> LIJPHART: *Patterns of Democracy...*, 2012, p. 43.

is a subspecies of the genus confederation. On the other hand, it is beyond any dispute that the ideas of federalism have penetrated the EU's structures and have been affecting inter-institutional relations considerably.<sup>140</sup> As pointed out already, the Union is a supranational organisation of a breadth and a depth that exceed the integration to be found in common international organisations. The Union is no superstate, and if considered to be a federation, it would be the mildest of all the existing federations. Moreover, the EU's institutions are strictly constrained by rules, administration, radical openness, and stringent subsidiarity provisions. Yet Andrew Moravcsik emphasises a marked degree of cooperation.<sup>141</sup> The Union can be viewed as a supranational organisation that has not absorbed its own Member States, the Member States continuing to be sovereign entities that have delegated some of their powers to a supranational organisation. Although the Union has its own legal personality in relation to all types of law, the joining of Member States does not reach such a degree of intensity that would justify calling the Union a federal state.<sup>142</sup>

If what has been said is put aside and the Union viewed as not a supranational organisation, the conclusion will be that federation is present in terms of federalist ideas entering the Union's structures. Lijphart's first characteristic principle of federation consists in a central-regional component vested with powers, and the Union undoubtedly has such a component. The powers between the Union and Member States split into exclusive, shared and auxiliary, and coordinating and supporting ones. The other five features are also present. As I mention in the chapter *Constitution*, the EU does not have one document, but constitutional law is made up of several written instruments. For the purpose of this thesis, I conclude in the following chapter that the EU's "parliament" has two chambers (the Parliament and the Council). Member States are authorised to be part of the amendment processes of the "federal constitution" (constitutional or primary law of the EU), any major change requires consents of Member States and no Member State is permitted to interfere in any other Member State's constitutional changes. The only condition is that changes in Member States do not conflict with primary law. In the Parliament the number of seats for large states is reduced in comparison to small states, and in the Council each state's vote is combined with its population. Last but not least, decentralised government of each Member State is preserved in the Union.

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<sup>140</sup> BURGESS, M. *Federalism and European Union: the building of Europe, 1950–2000*. London: Routledge, 2000, pp. 260–261, 273.

<sup>141</sup> MORAVCSIK, A. Federalism in the European Union: Rhetoric and Reality. In: NICOLAIDIS K. and R. HOWSE (eds.). *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*. Oxford: Oxford University Press, 2002, pp. 161–165.

<sup>142</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 121; HAMULÁK and STEHLÍK: *European Union constitutional law ...*, pp. 15–17.

Consequently, I draw the conclusion that the territorial arrangement of power corresponds to the full consensus model of democracy (two). Although the Union is not a federation officially, it is very linguistically diverse, and, in the light of Lijphart's models of democracy, the manifestations of federalist ideas correspond to the said model. All this based on the dispersion of power among the Member States which make up the Union. Having the Union in mind, it is possible to speak about a transfer of decision-making powers to regional authorities (Member States' respective governments), as in Switzerland, as well as a non-territorial transfer of powers on the basis of cultural communities provided the German-speaking countries are not united into a single community as is the case of Belgium.

### **3.2 Form of Legislative Power**

The form of legislative power includes a balance between parliamentary chambers provided that parliament is comprised of both the upper and the lower chambers, which are another criterion for determining the model of democracy. The pure majority model presupposes the legislative power is concentrated in the hands of one chamber whereas the consensus model is characterised by two chambers with balanced powers.<sup>143</sup> Starting from the already mentioned premise that the Council is the European equivalent of the upper house of parliament, I have to rule out the pure Westminster model (minus two) of legislative power. I will compare the balance between the lower chamber, represented by the Parliament, and the upper chamber, represented by the Council. Under this assumption, the legislative power is thus bicameral. Next step for correctly identifying the model of democracy is to determine whether the bicameralism is symmetrical or asymmetrical (balanced versus unbalanced). Generally speaking, bicameral systems include several differences that characterise the two chambers. The basic idea behind the upper parliamentary chamber is that its most important role is to operate as a conservative brake on the "more democratically" elected lower chamber. Arend Lijphart assesses the equivalence of chambers using three less important differences (1–3 below) and three important ones (4–6 below) that determine whether bicameralism is a significant institution. The first three points do not have such an effect on whether a bicameralism is strong one. Bicameralism is distinguished by the following six differences:

1. Upper house (the second one) is smaller than lower house (the first one);
2. Term of office for upper house (4–9) is longer than that for lower house (2–5);
3. Upper house elections are staggered elections held at regular intervals;

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<sup>143</sup> LIJPHART: *Patterns of Democracy*..., 2012, p. 187.

4. General rule is that upper house is subordinate to lower house, an example being that cabinet (government) accounts to lower house or that lower house can outvote upper house's refusal;
5. Second house's importance depends not only on its formal powers, but also on how its members are elected – directly or indirectly;
6. Last crucial difference is that upper house's purpose is to represent minorities.<sup>144</sup>

The Parliament is comprised up of 705 MEPs whereas the Council sits in ten different configurations, with each configuration consisting of 27 representatives from Member States, usually ministers. Assuming that every Member State has a different minister in each Council configuration, the number of the European “upper” chamber representatives is 270. The term of office for the Parliament is five years. As regards the Council, several aspects need to be taken into account. Ministers who attend meetings and vote in individual areas have usually won their mandates through elections to the lower chamber of parliament.<sup>145</sup> Furthermore, the electoral terms in Member States are not the same. However, no country has a term shorter than four or longer than five years.<sup>146</sup> Therefore, the unit of time is four to five years. However, it happens that a minister's term of office becomes shorter as a result of early elections or a vote of no confidence for the minister's government in the Member State. Elections to the Council are held through national elections to national first chambers, these elections produce governments and the governments' ministers then attend meetings of the Council and vote. As the elections to Member States' respective national parliaments are not held on the same day in the same year, it can be concluded that they are staggered elections. However, it is not justified to claim that the elections are held in regular intervals. Although the electoral terms are in Member States' constitutions set to be four or five years, that does not rule out the possibility that, for the reasons described above, the term for a parliamentary chamber of a Member States will end early.

As regards subordination, it cannot be claimed that the Parliament enjoys clear superiority over the Council. The Parliament can never override the Council in any legislative reading. The Parliament's superiority only lies in that it can stop the ordinary legislative process by rejecting, in the second reading, an amended act arrived from the Council. If rejected, the act will not become valid and the adoption procedure stops. However, the Council also has the

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<sup>144</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 190–194.

<sup>145</sup> The Chamber of Deputies in the Czech Republic.

<sup>146</sup> NORDSIECK, W. Parties and Election in Europe. *Parties-and-elections.eu* [online], 2021 [viewed 25 January 2022]. Available from: <http://www.parties-and-elections.eu/countries.html>



opportunity, in the third reading, to reject a joint proposal agreed in the conciliation procedure between the second and the third readings by an ad hoc conciliation committee, and only on the condition that all the Parliament's amendments were rejected by the Council in the second reading. If the Council rejects or does not discuss the proposal of the conciliation committee in the third reading, the act is not adopted and the whole process is ended. The vast majority of proposals are adopted in the first reading.<sup>147</sup> On the other hand, it is only the Parliament that can give or refuse to give a vote of confidence for the Commission as the executive body. Therefore, the Commission is not accountable to the Council as far as confidence is concerned. In any case, the Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.<sup>148</sup> In the fifth determining factor, the Council's position is on the boundary between direct and indirect elections. Although individual ministers are usually sent to the Council through prime minister's decision, the government as such are a product of elections. Nevertheless, I am inclined to hold that elections to the Council can be characterised as indirect, also because people do not elect their ministers and prime minister directly in elections, but through national parliaments. As already said, elections to the Parliament are direct elections. As regards the last point, there is no doubt that the Council is the "voice of Member States" and a place where Member States express their positions, usually on the basis of consensus. The Council's approval is needed for all major decisions in the Union.<sup>149</sup> The Council has equal representation of member countries and is, after the European Council, another important space for promoting national interests. The possibility of creating a blocking minority of at least four Council members representing more than 35% of the population in voting on a proposal of the Commission or the High Representative of the Union for Foreign Affairs and Security Policy. In this form of voting, abstention is usually considered a vote against.<sup>150</sup> Unanimity is another form of voting, for example in the area of common foreign and security policy.<sup>151</sup> In my opinion, all these options are a manifestation of that a minority of

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<sup>147</sup> General Secretariat of the Council. The ordinary legislative procedure. *Europarl.europa.eu* [online], 2022 [viewed 25 January 2022]. Available from: <https://www.consilium.europa.eu/en/council-eu/decision-making/ordinary-legislative-procedure/>

<sup>148</sup> Consolidated version of the Treaty on the Functioning of the European Union. Official Journal C 202/47, 7 June 2016, Article 241.

<sup>149</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 161.

<sup>150</sup> General Secretariat of the Council. Qualified majority. *Consilium.europa.eu* [online], 13 October 2021 [viewed 25 January 2022]. Available from: <https://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/>

<sup>151</sup> General Secretariat of the Council. Unanimity. *Consilium.europa.eu* [online], 28 January 2020 [viewed 25 January 2022]. Available from: <https://www.consilium.europa.eu/en/council-eu/voting-system/unanimity/>

states cannot be overpowered by strong states or majorities without the minority's observations, opinions or demands being taken into account.

Consequently, as bicameralism is in place, the arrangement of legislative power cannot be claimed to be the pure Westminster model of democracy (minus two). On the other hand, it is clear that the balance of the Union's "chambers" is not symmetrical, and therefore the form of legislative power cannot be considered to be the pure consensus model (two) either because the upper chamber is not elected in direct elections. According to Lijphart, the two criteria of strong bicameralism are chamber equality and different compositions of chambers. I agree with Lijphart in that the second condition is undoubtedly fulfilled.<sup>152</sup> Since no major decision can be adopted without the Council's consent and, as opposed to law-making procedures in national two-chamber parliaments, the Parliament does not dominate (that is, it cannot override the Council's amendments and the Council cannot override the Parliament's amendments), the differences disappear, and this seems to support the opinion that the chambers are equal. However, Lijphart maintains that the Council has been still holding more law-making power than the Parliament even after the Treaty of Lisbon was adopted.<sup>153</sup> Given that the Council as defined corresponds to balanced bicameralism by roughly 50%, I conclude that the arrangement of law-making powers is somewhere on the boundary between the consensus and the Westminster models of democracy (zero).

### 3.3 Constitution

Constitution is one of the basic components of what is referred to as higher law and protection of minorities is one of its roles. Constitutions split into rigid and flexible ones, depending on what is required for amending the constitution. In most countries with flexible constitution, simple majority is required for amending the constitution, whereas special majorities in the houses of parliament are required for amending a rigid constitution. Some countries also require an extra-parliamentary vote to amend the constitution, this voting being held as referendum. However, it is a question whether referendum in such a case is a typical majoritarian instrument or rather an initiative to gain consensus. Referendum is one of the means of amending rigid constitution in Switzerland, where people vote in individual cantons in addition to national referendum. Typical of the pure consensus model is a rigid constitution that is subject to and interpreted by the judiciary (constitutional court or supreme court). Generally speaking, constitutions split into written constitutions, which is the case in most

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<sup>152</sup> LIJPHART: *Patterns of Democracy...*, 2012, p. 40.

<sup>153</sup> Ibid.

countries of the world, and unwritten constitutions; these are very rare and can be found, for example, in the United Kingdom, New Zealand and Israel. Written constitutions break down into monolegal (codified) constitutions and semi-legal (non-codified) constitutions. Codified constitutions are characterised by being comprised of a single instrument (a single law) whereas non-codified constitutions are scattered in multiple instruments (laws); the latter is the case in the Czech Republic, for instance, where the constitutional order, or the constitution, is made up of the Constitution of the Czech Republic and other constitutional laws. Broadly speaking, the process leading to constitutional amendments splits into the following four types:

1. Approval by simple parliamentary majority (typical of flexible constitutions);
2. Approval by two-thirds of parliament;
3. Approval by less than two-thirds but more than simple majority, such as three-fifth parliamentary majority, or regular majority plus referendum; and
4. Approval by two-third or three-quarter majority together with state legislative assemblies.<sup>154</sup>

The arrangement of the sources of Union law corresponds to the special nature of the Union. Although the Union functions and exists on the basis of international treaties as regular international organisation do, the treaties make the Union a very specific organisation because Member States delegate to the Union extensive powers that are classified into exclusive, shared and auxiliary, and coordinating and supporting. With this step, Member States submit themselves to the Union, and these powers are then directed as far as individuals. The structure of Union law has two components. The laws of the EU are an independent hierarchically organised legal system similar to national legal systems in which constitutional law and substantive law can be distinguished. Primary law corresponds to the “constitutional” level because all other components of Union law are only formed on the basis of primary law, and secondary law corresponds to the lower “substantive” level, comprising both legislative and non-legislative acts adopted by the direct authority of primary law. The lowest level of secondary law is non-legislative implementing acts adopted under delegated power; they are analogous to “subordinate” acts in national law. I will only be discussing primary law in my thesis.<sup>155</sup>

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<sup>154</sup> Ibid., pp. 38–39, 204–211.

<sup>155</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 121.

Primary law is derived from several types of treaties or agreements.<sup>156</sup> The founding treaties are the Treaty of Paris establishing the European Coal and Steel Community, which, however, ceased to be valid in 2002 as expected. The Treaty of Rome establishing the European Economic Community and the Treaty of Rome establishing Euratom, both of which have still been in place. However, the former was in 1992 transformed into the Maastricht Treaty establishing the European Union and has been in place as the TFEU since 2009. Together with the TEU, they are the backbone of the EU's legal system. The amending treaties are the Single European Act, the Treaty of Amsterdam, the Treaty of Nice, and the Treaty of Lisbon. Accession treaties regulate the enlargement of the Union by other states in pertinent years. The last component of primary law is general principles of law, which are the unwritten source of EU law and are formulated in the judgements of the Court of Justice of the EU. These principles are primarily based on common constitutional traditions of Member States and the general principles of international law. The most important general principle of law is the one concerning the status of the individual, and splits into the protection of fundamental human rights, the principle of certainty in the law,<sup>157</sup> the right to due process<sup>158</sup>, and the principle of equality. Currently, fundamental rights have been protected primarily through the Charter of Fundamental Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which the Union has joined. Another group is structural principles, which break down into principles related to the Union's powers<sup>159</sup> and principles for the application of Union law.<sup>160</sup> The last group of the general principles is axiomatic principles, which concern the conceptual definition of legal order as such and do not originate from a specific legal order. They are intrinsic to every legal order.<sup>161</sup>

Primary law can be amended primarily through ordinary procedure and simplified procedure. Ordinary procedure may be used to amend any part of the Treaties, including their

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<sup>156</sup> Founding treaties, amending treaties, accession treaties, protocols annexed to those treaties, additional agreements amending certain sections of the founding treaties, the Charter of Fundamental Rights, technical matters agreements, and general principles laid down by the Court of Justice of the EU, which may interpret them but does not decide their validity.

<sup>157</sup> This principle also includes the principles of: the protection of legitimate expectations, the clarity of legal rules, acquired rights, and the prohibition of retrospective effects.

<sup>158</sup> This principle includes: the right to be heard, the right of defence, and the right to see a lawyer.

<sup>159</sup> A principle consisting of the principles of: conferral of powers, subsidiarity, and proportionality.

<sup>160</sup> A principle consisting of the principles of: the primacy of EU law over national law; direct effect of EU law; Member States being liable for infringement of EU law; proportionality, also applicable to Member States rather than just EU institutions, and the *effet utile* of EU law, a term translatable as "useful effect".

<sup>161</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 99–106; HAMULÁK and STEHLÍK: *European Union constitutional law...*, pp. 54–61; HAMULÁK and STEHLÍK: *Praktikum práva Evropské unie...*, pp. 37–39; EUR-LEX. The European Union's primary law. *EUR-Lex.europa.eu* [online], 13 March 2020 [viewed 25 January 2022]. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A114530>

protocols, on the initiative of the government of any Member State, the Commission or the Parliament. The subsequent procedure for adopting amendments has two options: with a convention or without convening a convention. In both cases, the proposal is forwarded by the rapporteur to the Council, the Council referring it without undue delay to the European Council for further proceedings. And the European Council refers it to the Parliament and the Commission for further discussion. If the amendment concerns institutions in the monetary area, the European Council is required to consult the European Central Bank, and then votes on the preliminary draft amendment. A simple majority is sufficient for adoption. Subsequently, it is necessary to decide whether or not a convention will be held in respect of the proposed amendments. Deciding the proposal without convention requires the Parliament's consent. If a meeting of the convention is held, it consists of the representatives of the parliaments of the Member States, heads of state or prime ministers, the Parliament, and the Commission. Convention's role is to hold a due discussion on the proposal, those proposed changes which have received preliminary consent from the European Council, and the subsequent recommendation adopted by consensus. If no convention is convened, the President of the Council will convene a meeting of the conference of representatives of Member States' respective governments. The conference is attended by representatives of Member States' governments and prepares an amendment to the Treaties that is usually adopted unanimously by the consent of all the heads of state and prime ministers of Member States (or their authorised representatives), who will meet at European Council meetings. If both procedures are fulfilled, what is yet required for a Treaty to become valid is the ratification of the Treaty by all Member States.<sup>162</sup>

The second option for amending the Treaties is the simplified procedure laid down in a number of provisions of the Treaties in order to facilitate partial procedural or substantive changes to the Treaties. In practice, it is changes in some provisions of that part of the TFEU which regulates internal policies and activities of the Union. Another example of the simplified procedure is the amending of those parts of the TFEU or the TEU which concern CFSP. However, in both cases, the changes suggested by the European Council will be communicated to national parliaments. If a national parliament communicates dissent within six months, the decision will not be adopted. The last example is the flexibility clause in Article 352 of the TFEU. That article stipulates that if action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the

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<sup>162</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 189–190.

Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.<sup>163</sup> My opinion is that constitutional law in the Union is quite rigid. The simplified procedure for changing parts of the provisions of the primary law Treaties focuses more on the rapidly developing world. That is, to ensure that the Union is able to respond quickly and flexibly – to imminent threats, for example. The simplified procedure is also in place so that the EU can quickly amend procedural provisions that may not significantly interfere with the powers of individual states and a lengthy approval procedure would be redundant. In any case, it is clear that they can also stop the process in that case. I arrive at the conclusion that the system, as currently organised, corresponds to the full consensus model of democracy (two). In spite of the absence of any embodied duty to hold a referendum to amend primary law, it is possible to draw the conclusion that the requirement to have consent of each Member State is such a greater/lesser referendum and suggests that the EU's constitutional law is extremely rigid. An example can be seen in the draft treaty establishing a constitution for Europe, approved by the European Council on 18 June 2004, signed in Rome the same year in the presence of the President of the Parliament, and subsequently passed by the Parliament. However, the treaty was rejected by national referenda in France and the Netherlands, was never ratified and therefore never entered into force.<sup>164</sup>

### 3.4 Judicial Review of Constitutionality

This chapter continues the previous chapter. In his book, Arend Lijphart discusses these two elements in a single chapter, claiming that the pure consensus model of democracy is characterised by rigid constitution and its judicial protection.<sup>165</sup> In the Union, the parallel to our Constitutional Court or supreme courts in other states is the Court of Justice of the EU, which includes the Court of Justice, the General Court and specialised courts and its role is to ensure that the law is observed in the interpretation and application of the Treaties.<sup>166</sup> The system of courts also includes national courts; their relationship with the Court of Justice of the EU is primarily based on cooperation, decentralisation and subsidiarity, rather than being a classic hierarchical relationship. The cooperation is based on that EU courts have no jurisdiction to

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<sup>163</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 190–192.

<sup>164</sup> European Parliament. Návrh Smlouvy o Ústavě pro Evropu (neratifikována). *Europarl.europa.eu* [online], 2022 [viewed 25 January 2022]. Available from: <https://www.europarl.europa.eu/about-parliament/cs/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe>

<sup>165</sup> LIJPHART: *Patterns of Democracy...*, 2012, p. 204.

<sup>166</sup> Consolidated version of the Treaty on European Union. Official Journal C 202/13, 7 June 2016, Article 19(1).

directly review the correctness of the decisions of national courts, and therefore have no jurisdiction to quash their decisions. The decentralisation is based on that no system of specialised EU courts exists that would carry out their business in individual Member States and apply EU law on national level. This is the role of national courts. The last feature, subsidiarity, is based on that EU courts apply EU law on the Union level and can only intervene in national proceedings in certain cases whereas national courts decide everything that is outside the jurisdiction of EU courts.<sup>167</sup>

As already said, compliance with EU law is on the Union level ensured by the Court of Justice of the EU. The principle of delegated powers determines what powers are vested in EU courts and vice versa. The jurisdiction of EU courts covers the reviewing of the legality of the activities of EU bodies, the legality of the activities of Member States on the motion of the Commission, and assistance to national courts in the application of EU law through the institution of preliminary rulings. In contrast to the Constitutional Court of the Czech Republic and other constitutional courts, they have no jurisdiction to repeal national regulations or decide legal actions filed by private individuals against a Member State. On the other hand, the relationship between EU courts and national courts is not governed by the principle of exhaustion of national remedies, which applies in respect of the European Court of Human Rights, for example. Therefore, if an EU court (the General Court in particular) has jurisdiction to decide a matter, proceedings are initiated with that court without parties required to first apply to national courts.<sup>168</sup> “The Court of Justice primarily operates as a constitutional court, to which only constitutional actors, i.e. EU institutions, Member States and national courts, can apply. Individuals have no direct access to the Court of Justice.”<sup>169</sup> However, this is not the case with the Tribunal, to which parties have direct access. This court’s primary role is to operate as an administrative court.<sup>170</sup>

Union and national courts share some features and are also characterised by some court-specific features. A common specific feature is effective judicial protection, which requires that courts ensure an effective protection of all union rights. However, this feature only applies to individuals and legal entities. As a result of decision C-160/03 *Spain v. Eurojust*, neither Member States nor EU bodies can invoke the principle of effective judicial protection in order

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<sup>167</sup> For the purpose of my thesis, I take account of that the EU is regarded as a supranational entity and, consequently, I will discuss the application of law on the EU level in the following part of this chapter; TOMÁŠEK at al.: *Právo Evropské unie*, p. 372.

<sup>168</sup> *Ibid.*, pp. 377–378.

<sup>169</sup> *Ibid.*, p. 378.

<sup>170</sup> *Ibid.*

to bring a legal action before Union courts unless such legal action is expressly regulated in Union legislation. Another feature is that EU law is multilingual law existing in the 24 official languages of the EU. A practical consequence of this is that EU courts conduct their business in all official languages. Therefore, decisions as well as legal regulations are translated into all official languages of the Union. However, every case is heard in only one of the official languages. Another feature is the autonomous and dynamic interpretation ensured by the interpretation of legal rules. Through this procedure, specific to a degree, the Court of Justice first places emphasis on the autonomous interpretation of the rules and concepts contained in the Union's legislation in order to ensure uniform interpretation of law. Exempted are only those provisions which refer to the laws of Member States in order to define the provisions' scope and meaning. EU courts primarily apply teleological interpretation in combination with systematic interpretation. The final common feature is the natural justice approach to law. A significant step has been the Court's of Justice opinion declaring unwritten general principles of law a formal source of Union law. The Court also specified what principles are part of this source of law. However, these tendencies have been growing weaker and EU law is becoming rather positivist law. This is primarily due to the adoption of the Treaty of Lisbon, which has put most of the unwritten principles into writing. There are several types of proceedings before EU courts; contested and uncontested proceedings; and last but not least, preliminary ruling procedure initiated by a national court.<sup>171</sup>

The compositions of the components of the Court of Justice of the EU are as follows. The Court of Justice consists of one judge from each Member State and is headed by President elected for a three-year term.<sup>172</sup> Judges are assisted by 11 Advocates-General. Both of these positions are of equal status and require guaranteed independence. A Member State's candidate is proposed by the State's government. For the sake of ensuring the independence and impartiality of judges, other governments have the right to reject the proposed candidate. Unanimous consent of all Member States is required for appointment. Term of office is six years and can be renewed. Half of the judges and advocates are replaced every three years. The independence of members lies in the fact that they only represent their home countries' legal orders, systems and cultures rather than Member States. Another means of ensuring their independence is that they possess immunity and are exempt from the jurisdiction of the courts as a result, also for the time after the end of their term as far as the discharge of their office is concerned. In essence, they cannot be deprived of their office because judges and advocates-

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<sup>171</sup> *Ibid.*, pp. 379–383, 388–390, 407–408.

<sup>172</sup> Consolidated version of the Treaty on European Union. Official Journal C 202/13, 7 June 2016, Article 19(2).



general can only be removed from office by a unanimous decision of all other judges and advocates-general. Only provided they do not meet the criteria for the discharge of their office or fail to discharge the duties arising from their office. The antipole to the President of the Court of Justice is the First Advocate-General. The General Court's former name the Court of First Instance was changed in the Treaty of Lisbon.<sup>173</sup> The General Court is composed of two judges from each Member State.<sup>174</sup> As the General Court's primarily role is to operate as an administrative court, I leave it out of account in the following sections of my thesis. Specialised courts can be established through regulations adopted by the Parliament and the Council in the ordinary legislative procedure. When established, a specialised court is attached to the General Court.<sup>175</sup>

Having considered the aforesaid information, I have decided to classify the judicial review of constitutionality as fully consensual (point two on my comparison axis). Although judges could serve a term of office longer than just six years because, in my opinion, this would contribute to a greater impartiality and independence from Member States' governments, I still maintain that the independence and impartiality of courts and judges are ensured. The Court of Justice of the EU is a key institution that, like the Constitutional Court of the Czech Republic, has the right to declare a law of the Union or a member country unconstitutional on grounds of violation of EU law. Moreover, as can be seen in history, the activity of the Court of Justice has been very creative and activist.<sup>176</sup> Also, as held by the political scientist Alec Stone Sweet in his book from 2004, when compared with the most powerful supreme courts in any country, the Court of Justice of the EU is unrivalled in being the most effective supranational judicial body in the history of mankind.<sup>177</sup>

### 3.5 Central Bank

Central Bank is the last criterion in the constitutional-territorial dimension and also the last chapter of the third part of my thesis. Central Bank is the second criterion added by Arend Lijphart in 1999 to his *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* as relevant to determining a model of democracy. Central banks are as crucial as other governmental institutions,<sup>178</sup> and yet often omitted in books and papers on political

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<sup>173</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 373–386.

<sup>174</sup> COURT OF JUSTICE OF THE EUROPEAN UNION. General Court. Presentation. *Curia.europa.eu* [online], 2022 [viewed 25 January 2022]. Available from: [https://curia.europa.eu/jcms/jcms/Jo2\\_7033/en/](https://curia.europa.eu/jcms/jcms/Jo2_7033/en/)

<sup>175</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 377.

<sup>176</sup> LIJPHART: *Patterns of Democracy...*, 2012, p. 40.

<sup>177</sup> STONE SWEET, A. *The judicial construction of Europe*. Oxford: Oxford University Press, 2004, p. 1.

<sup>178</sup> The executive, legislature, interest groups, electoral system, etc.

science. For example, it was Alan Greenspan, the then chairman of the U.S. Federal Reserve System, rather than the then American president Bill Clinton whom Robert B. Reich named as the most powerful man in the world. Central bank's independence of the executive branch is a factor that distinguishes the consensus model of democracy from the Westminster model. Central bank's most important task is to conduct monetary policy, that is, regulate money supply and interest rates. Monetary policy has a direct impact on inflation rate and price stability. It also has an indirect and very strong impact on unemployment rate, business cycle fluctuation and economic growth. In addition to this authority and the most important task, central banks are vested with other powers, such as managing government financial transactions, funding government budget bonds by purchasing government securities, regulating and administering commercial banks, etc.<sup>179</sup>

In terms of the Union, what is the key institution in respect of my thesis is the European Central Bank based in Frankfurt on Main. Together with all national central banks of Member States, the ECB forms the European System of Central Banks (ESCB). The difference between ESCB central banks is that there is one group made up of euro area member countries, or the countries which have adopted the euro single currency and practice a single monetary policy, whereas the other group is made up of the countries which have not adopted euro and practice their own monetary policies. From a legal point of view, the ESCB does not have any legal personality,<sup>180</sup> whereas the ECB and the respective central banks of Member States do and have the status of separate legal entities. The ECB and the central banks of the Member States whose currency is euro make up the Eurosystem and manage the monetary policy of the Union. A practical consequence is that the countries which have adopted euro have delegated all monetary powers to the ECB, which is the monetary policy body for the entire euro area. As a result, the central banks of these countries which participate in the third stage of economic and monetary union are just national authorities for the implementation of the ECB's single monetary policy.<sup>181</sup> Currently, the euro area covers 19 EU countries, and euro is also in use in countries other than the member countries.<sup>182</sup> Lijphart himself says that significant changes took place in the mid-1990s, when the central banks of 17 countries joined the ECB, the countries joining the euro area and delegating most of their powers and roles to an institution

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<sup>179</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 226–229.

<sup>180</sup> It is therefore a corporation of central banks.

<sup>181</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 176–178; consolidated version of the Treaty on the Functioning of the European Union. Official Journal C 202/47, 7 June 2016, Article 282.

<sup>182</sup> EUROPEAN CENTRAL BANK. Our money. *ecb.europa.eu* [online], 2022 [viewed 25 January 2022]. Available from: <https://www.ecb.europa.eu/euro/intro/html/index.en.html>

in an international system. According to Lijphart, that fact had significant implications for the analysis of the criterion central bank and its independence among the 13 countries he evaluated, because those central banks could not be regarded as home institutions after the mid-1990s.<sup>183</sup> However, this remark has practically no impact on my thesis. Central bank independence is measured by Lijphart using four formal criteria (the Westminster versus the consensus model of democracy):

1. Term of office for central bank governor shorter than four years versus longer than eight years;
2. Governor can be removed by a decision of the executive versus governor cannot be removed;
3. Holding the office can versus cannot be combined with holding other governmental office; and
4. Banks with no influence on monetary and budgetary policy versus banks with sole responsibility for the formulation of monetary policy and with active involvement in the budgetary process of the executive.<sup>184</sup>

The goal of the EU is to maintain the independence of the ECB in order to secure the value of the currency because this is done better on the basis of knowledge than if the ECB's decisions depend on a short-term consensus among a country's political forces. Moreover, historical experience shows that the weakening of democracy can be caused by the strengthening of government power, which can be effected through currency manipulation. As already said, the ECB is the euro area's monetary policy body defining and implementing the Union's monetary policy based on the doctrine of price stability. That allows the ECB to forecast inflation, primarily through the volume of money supply, and use special monetary policy instruments. In addition to these objectives and tasks, the ECB carries out foreign exchange transactions, holds and manages foreign exchange reserves of member states, and supports the smooth functioning of payment systems. Being the euro area's issuing bank, the ECB holds the exclusive position in respect of issuing euro banknotes. Last but not least, the ECB can perform tasks pertaining to financial market supervision, with the exception of insurance undertakings. The ECB consists of three decision-making bodies. The General Council consists of president, vice-president of the ECB and the governors of the central banks of all member states; the General Council's role is rather advisory and coordinating.<sup>185</sup> The

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<sup>183</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 227–228.

<sup>184</sup> LIJPHART: *Patterns of Democracy...*, 2012, pp. 229–230.

<sup>185</sup> The General Council is not an important body for the purpose of my thesis.

Executive Board deals with the day-to-day business of the ECB and is comprised of president, vice-president and four other members. The main decision-making body is the Governing Council, comprised of the Executive Board members and the governors of the central banks of the euro area countries. The Governing Council determines the monetary policy for the euro area by taking decisions on ECB basic interest rates and adopting the general doctrines and decisions necessary for keeping the Eurosystem up and running. The Governing Council's governors collaborate on the basis of a transnational rather than intergovernmental approach. This means they act as experts in their fields rather than represent the interests of the member states. The Commission operates on a similar principle. Simple majority vote is sufficient in most cases but the increasing of the ECB's core capital requires a qualified majority of central bank governors. In this type of voting, the votes of the Executive Board members have no weight.<sup>186</sup>

The tasks of the Executive Board are to prepare Governing Council meetings, manage the regular business of the ECB, implement the euro area's monetary policy in accordance with the general principles and decisions adopted by the Governing Council; the Board is also authorised, as part of the Governing Council's business, to give directions to the central banks of Member States and execute the powers delegated to it by the Governing Council.<sup>187</sup> Therefore, it is legitimate to claim, in my opinion, that out of the ECB's three bodies, the Executive Board is the highest supranational body in the Union although a considerable portion of the Board's powers is delegated to it by the Governing Council. Article 283(2) of TFEU provides that all members of the Executive Board are appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank. Each member needs to be a national of a Member State of the Union; members are appointed for eight years and their term of office is not renewable.<sup>188</sup> In their full-time employment, they may not be engaged in any other gainful or non-gainful professional activity alongside the discharging of their office. The Governing Council is authorised to grant exceptions. Each

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<sup>186</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 177–180; Directorate-General for Communication. EU INSTITUTION. European Central Bank (ECB). *european-union.europa.eu* [online], 2022 [viewed 25 January 2022]. Available from: [https://europa.eu/european-union/about-eu/institutions-bodies/european-central-bank\\_cs](https://europa.eu/european-union/about-eu/institutions-bodies/european-central-bank_cs)

<sup>187</sup> TOMÁŠEK et al.: *Právo Evropské unie*, p. 180; Directorate-General for Communication. EU INSTITUTION. European Central Bank (ECB). *european-union.europa.eu* [online], 2022 [viewed 25 January 2022]. Available from: [https://europa.eu/european-union/about-eu/institutions-bodies/european-central-bank\\_cs](https://europa.eu/european-union/about-eu/institutions-bodies/european-central-bank_cs)

<sup>188</sup> Consolidated version of the Treaty on the Functioning of the European Union. Official Journal C 202/47, 7 June 2016, Article 283(2).

member of the Executive Board has one vote, and the chairman's vote is decisive in a tied voting situation. Within the framework of central banks, primary law establishes three areas of central bank independence: institutional, personal, and financial; these areas must be assessed separately. The appointment of national central bank governors is not harmonised under EU law, but a minimum term of office must be five years so that it extends beyond the normal electoral term of the political cycle. In fact, Executive Board members are impossible to be removed from office. The sole authority to remove an Executive Board member from office is vested in the CJEU; provided that the member does not meet the conditions required for the discharge of the member's office or has committed a serious wrongdoing and the Governing Council or the Executive Board has applied for such removal.<sup>189</sup>

Also, the foundations of the ECB rest on its financial (budgetary) independence. No third party is permitted to determine or influence the budget of the central bank. The ECB and the central banks do not have any authority or right to provide the Union's bodies or institutions, central governments and the like bodies with any account overdraft service and any other type of credit. The ECB is explicitly prohibited from rehabilitating or subsidising the Union's budget.<sup>190</sup> Considering all the above information about the ECB and its bodies, I come to the conclusion that the arrangement of the Union's central bank corresponds to full consensus model of democracy. I see the Executive Board as the only supranational body of the ESCB; members of the Executive Board are appointed for eight years, they cannot be, in fact, removed from office and their office is not compatible with holding any governmental office. Although the ECB's bodies function as a whole, this does not change the fact that the ECB, of which the Executive Board is a part, formulates monetary policy and can be consulted on budgets. Considering the supranational level, there is no doubt about the independence and power of the ECB. What can only compromise my conclusion about full consensus model of democracy is that not all Member States of the Union are members of the euro area.

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<sup>189</sup> TOMÁŠEK et al.: *Právo Evropské unie*, pp. 180–182.

<sup>190</sup> *Ibid.*, pp. 182–183.

## Conclusion

The aim of my thesis was to analyse the current model of democracy in the Union and answer my research question: “Does the EU correspond more to the consensus or the Westminster model of democracy?” The results of my investigation are shown in Table 3. My thesis is in terms of theory based on books by the Dutch political scientist Arend Lijphart, whom I regard as the “father” of models of democracy. Other books, articles and legislation have been used for a detailed analysis of the criteria. In the first chapter, I have outlined the main focus of Arend Lijphart’s assessment of models of democracy, and the development of models of democracy. I have continued by defining Lijphart’s theoretical concept of models of democracy (the consociational, Westminster and consensus models), primarily relying, in respect of the definition for each criterion, on his books published between 1977 and 2012. At the end of the first chapter, I have evaluated how Lijphart has applied models of democracy to the Union.

Table 3: Current Model of Democracy (X)

<b>Westminster (-2) vs. Consensus (2) Model of Democracy</b>					
	-2		0		2
Executive branch					X
Relationship between executive and legislative branches					X
Party system					X
Electoral system			X		
System of interest groups				X	
Territorial organisation of power					X
Form of legislative power			X		
Constitution					X
Judicial review of constitutionality					X
Central bank					X

Source: I myself, on the basis of my examining the individual criteria in the first, analytical part.

Because of the scope of my thesis, I have decided to divide the ten criteria of the two opposing models of democracy into two chapters, namely the executive-party dimension and the constitutional-territorial dimension. Arend Lijphart divides these ten criteria into the executive-party dimension and the federal-unitary dimension, as shown in Table 1. It is the latest 2012 edition of *Patterns of Democracy: Government Forms & Performance in Thirty-six Countries* that was my starting point for those chapters; however, the 2012 edition is not radically different from the 1999 edition. In those chapters, I have focused on analysing the model of democracy in the Union. Having examined all the ten criteria relevant to discriminating between the consensus and the Westminster models of democracy, I have come to the conclusion as demonstrated in Table 3. The table clearly shows a corroboration of my hypothesis that “*the arrangement of the EU’s political system approximates the consensus model of democracy*”. The results obtained in my thesis show that in none of the ten criteria has the Union been placed on the negative half-line, that is, in the Westminster model of democracy. I have only put the Union on the boundary (point zero) between the Westminster and the consensus models in two criteria (electoral system and form of legislative power). Although seven criteria are included under full consensus model of democracy in the table,<sup>191</sup> I deliberately use two words – *approximates* and *is*, because, as already said, no country exemplifies full consensus or full Westminster model of democracy, these two being two ideal types. At the same time, that has also provided the answer to my research question, the answer being that the Union corresponds more to the consensus model of democracy.

However, in my opinion, the arrangement in some criteria is problematic and may not support either model of democracy, which has also manifested itself in determining the model of democracy. The most problematic is the arrangement of the system of elections to the Parliament, with no uniform conditions set. Although member countries have to manoeuvre within the prescribed boundaries, the determination of electoral system is left for their discretion. Member States are required to use a type of proportional electoral system, but the different proportional system types can have diametrically different results and opposite effects, depending on the size of electoral district, the composition of population, and the electoral threshold. This fact may raise the question about a democratic deficit in the Union.

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<sup>191</sup> Only two criteria (electoral system and form of legislative power) are put on the boundary between the Westminster and the consensus models of democracy.

In terms of the position of legislature, the Council's composition is rather problematic because the respective Member States' ministers meeting in the ten compositions of the Council are not directly elected by people for a pre-determined term of office in the Council. Their selection is based on elections to national parliaments held on different dates, depending on the tenure and lifespan of national governments. This does not correspond to standard upper parliamentary chambers as elections to such chambers are held at pre-determined intervals.<sup>192</sup> Furthermore, in these elections, European topics are often on the back burner or presented through the lens of the choice between for versus against the European Union. Although both the political and the legislative systems of the EU have a supranational or transnational component (the Parliament) as well as an intergovernmental component (the Council), the system which translates Member States' ministers to the Council's responsibilities is very remote from the people. In addition to the doubts mentioned above, this also generates doubts about the degree of the democratic component of that body, which, however, does not have any significant impact on the determination of the model of democracy. What I mean in particular is that national elections, which generate the ministers, usually put no emphasis on that the ministers generated through the elections will be representing the people at Council meetings. In my opinion, it is a pity and a great disadvantage in respect of the partisan system that the political groups have not yet transformed into transnational political parties that would be elected to the Parliament by the citizens of the Union in their electoral districts. This would certainly contribute to ensuring greater cooperation across the borders of the sovereign states, bringing the Union closer to the people, and ensuring better coordination of policies. Finally, I also do not agree with the overlapping of the institutions' competencies, with no clear determination as to who has the legislative role and who the executive one.

As the Union has been evolving for over half a century, it will be interesting to observe the direction the Union will take in the coming years. The current trend of intensified integration and still weaker economic, social, cultural and religious borders between the countries may continue, or it may come to a halt and we may see countries leaving the EU as the United Kingdom has done already. The enlargement of the Union by Balkan states has also been a long-discussed issue. However, what is for certain is that the EU is a unique organisation in which the member states have decided to delegate some of their "sovereign" powers and let them to be decided by joint bodies originating from democratic elections. In conclusion, I wish to add that examining models of democracy provides many theoretical options of how the

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<sup>192</sup> In the Czech Republic, for example, a senator's term of office is six years, with elections to elect one third of senators held every two years.



subject can be treated. However, the limited scope of my thesis has prevented me from investigating the criteria to such a degree of detail that I would wish. A separate paper could be written on each sub-chapter. However, the added value of my thesis lies in that it is a single document that expands, and adds information to, a subject that has only been treated by Lijphart marginally.

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## Summary

The master's thesis titled *European Union – Westminster or Consensual Model of Democracy?* focuses on the analysis of the current model of democracy in the European Union. The thesis is divided into three main chapters: the first chapter discusses the theoretical definitions of the models of democracy (consociational, Westminster and consensus models) by the Dutch political scientist Arend Lijphart and his current application of the consensus model of democracy to the European Union. The second and the third chapters aim to examine whether the model of democracy approximates the consensus model of democracy, which is what Arend Lijphart claims in his work. My thesis covers the period from 2009, when the Treaty of Lisbon took effect, to the most recent elections to the European Parliament in 2019.

## Shrnutí

Diplomová práce na téma „Evropská unie – westminsterský nebo konsensuální model demokracie?“ se zaměřuje na analýzu současného modelu demokracie v Evropské unii. Práce je rozdělena do třech hlavních kapitol, kdy první je věnována teoretickému vymezení modelů demokracie (konsociační, westminsterský a konsensuální) od nizozemského politologa Arenda Lijpharta a jeho dosavadní aplikaci konsensuálního modelu demokracie na Evropskou unii. Ve druhé a třetí části je cílem výzkumné otázky ověřit, zda se model demokracie přibližuje konsensuálnímu modelu demokracie, tak jak uvádí ve svých pracích Arend Lijphart. Časové vymezení práce je od roku 2009, kdy nabyla účinnosti Lisabonská smlouva do posledních voleb do Evropského parlamentu v roce 2019.

## **Keywords**

Westminster model of democracy, consensus model of democracy, European Union, European Council, Commission, Council of the EU, European Parliament, Court of Justice of the EU, and European Central Bank.

## **Klíčová slova**

Westminsterský model demokracie, konsensuální model demokracie, Evropská unie, Evropská rada, Komise, Rada EU, Evropský parlament, Soudní dvůr EU a Evropská centrální banka.